

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA	§	CASE NO. 7:19-CR-00522
	§	McALLEN, TEXAS
VERSUS	§	
	§	WEDNESDAY,
RICARDO QUINTANILLA	§	JANUARY 18, 2023
ARTURO C. CUELLAR	§	
JOHN F. CUELLAR	§	2:00 P.M. TO 4:09 P.M.

SENTENCING HEARING

BEFORE THE HONORABLE MICAELA ALVAREZ
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE NEXT PAGE

COURTROOM ERO: STEPHANIE GARCIA

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1 McALLEN, TEXAS; WEDNESDAY, JANUARY 18, 2023; 2:00 P.M.

2 THE COURT: Good afternoon. You may be seated.

3 This is Case Number 19-522, the United States versus
4 Ricardo Quintanilla, John Cuellar and Arturo Cuellar.

5 Announcements, please.

6 MR. GULLOTTA: Good afternoon, Your Honor. Bill
7 Gullotta on behalf of the United States.8 MR. PEÑA: Jaime Peña for Mr. Quintanilla, he's
9 present and ready, Your Honor.

10 THE COURT: Thank you.

11 MR. GARCIA: Carlos Garcia, Your Honor, on behalf of
12 Arturo Cuellar, with Cynthia Orr and Michael Bro (phonetic).

13 THE COURT: All right. Thank you.

14 All right. We have various issues. I don't want to
15 take everybody up together for everything, but there are --
16 well, at least there is one that I expect will be the same
17 across the board so I would like to start with that one.18 But let me first have each Defendant stand up so
19 that I can give -- first of all, may be sworn in. If I can
20 have you each please raise your right hand to be sworn in.

21 (Defendants sworn.)

22 THE COURT: All right. And you each answered yes.
23 I don't know if the Record quite picked it up, but each did
24 answer yes. So if each one of you will remain standing for
25 just a little bit.

1 For each one of you, of course, you are before the
2 Court for sentencing on, for Mr. John Cuellar one count, then
3 for Mr. A.C. Cuellar, Mr. Quintanilla for a multitude of
4 counts, I won't go through each one individually, but do you
5 each understand that?

6 (Defendants respond yes.)

7 THE COURT: Okay. I'll ask each one to speak up a
8 little bit louder since you are at a little bit of distance
9 from the Court.

10 And then, counsel for each, did you receive and
11 review the Presentence Investigation Report?

12 As to Mr. Quintanilla?

13 MR. PEÑA: Yes. Your Honor.

14 THE COURT: As to Mr. John Cuellar?

15 MR. MONTALVO: Yes, Your Honor.

16 THE COURT: And for Mr. Arturo Cuellar?

17 MR. GARCIA: Yes, Your Honor.

18 THE COURT: Okay. And did you review that with your
19 client?

20 For Mr. Quintanilla?

21 MR. PEÑA: Yes, Your Honor.

22 THE COURT: For Mr. John Cuellar?

23 MR. MONTALVO: Yes, Your Honor.

24 THE COURT: And for Mr. Arturo Cuellar?

25 MR. GARCIA: Yes, Your Honor.

THE COURT: As to each one, Mr. Quintanilla, Mr. John Cuellar, Mr. Arturo Cuellar, did you review with your attorney the Presentence Investigation Report?

DEFENDANT QUINTANILLA: Yes, Your Honor.

DEFENDANT J. CUELLAR: Yes, ma'am.

DEFENDANT A. CUELLAR: Yes, ma'am.

THE COURT: All right. Okay. Then I won't go into what the guideline range is right now because there are several issues we need to address. We'll go through that and then I'll tell you for each one of you where ultimately we land.

Okay. So what I would like to start with here is the issue as far as value. And in that regard I have various arguments. Ultimately the Presentence Investigation Report ended with a value of 4.1. I know there have been objections across the board. One of those objections I think references the guideline application for what is a Government benefit to which under the guidelines are handled slightly different from just valuation in general.

So I want to start with that to make sure that we are all operating from the same place, and that is that to be clear, it is the Court's position, and maybe if anybody disagrees with it, I'll certainly consider it, but it is the Court's position that this is a procurement fraud type of case, not a Government benefits type of case. A Government

1 benefit case being one for example the guidelines say food
2 stamps, something of that nature, the concern is that we look
3 at that in a more restricted sense. And so it is the Court's
4 position that it is the general rules for law that would apply
5 in this case.

6 The Government hasn't really touched on this
7 specifically but I know from the defense I got an objection,
8 one that referenced a case at least dealing with Government
9 benefits rather than procurement law.

10 So do you agree kind of as to why this would be a
11 procurement fraud type of case, not a benefits type of case?

12 MR. GULLOTTA: Yes, Your Honor. The Government
13 agrees that it's not a benefits type of case. And I think
14 even more clearly stated perhaps is that this isn't -- I don't
15 think the PSR nor the Government's calculation deals with
16 loss.

17 THE COURT: Right.

18 MR. GULLOTTA: It's not about loss, it's about the
19 value of the payment, which is the first item in
20 2(c)1.1(b) (2).

21 THE COURT: Right.

22 MR. GULLOTTA: In terms of the value --

23 THE COURT: I'm just using the term loss sort of
24 broadly because we're looking at that value to see where --
25 what it has been as applied in this case. So, okay. So I'll

1 just go in the order -- Mr. Garcia, do you agree with what the
2 Government has said?

3 MS. ORR: I will speak here with regards to --

4 THE COURT: Okay. I'm going to have one counsel
5 address it, so if you're going to address the Court on these
6 issues, it'll be across the board. I'm not going to have two
7 counsels speaking for one --

8 MS. ORR: That's fine, Your Honor.

9 THE COURT: Okay.

10 MS. ORR: Thank you.

11 THE COURT: Sure.

12 MS. ORR: I do agree with the Court that this is not
13 a benefits case, but I also would agree with the Court that
14 this is a payment case where we're talking about the quid pro
15 quo, and I briefed this in my objections at Page 6, Your
16 Honor.

17 THE COURT: Okay. All right.

18 Mr. Peña?

19 MR. PEÑA: Procurement case, Your Honor.

20 THE COURT: Okay. And, Mr. -- I'm sorry,
21 Mr. Montalvo. I'm not seeing you, so --

22 MR. MONTALVO: Oh, yes, Your Honor.

23 THE COURT: There you are. There you are.

24 MR. MONTALVO: Yes. I agree with procurement with
25 respect --

1 THE COURT: Okay. Okay. So with that in mind, and
2 there was an argument, again, the (indiscernible) are
3 ultimately settled on the one million. There was I think
4 initially some argument from the Government that it would be
5 the 38, and I don't believe that that would be the case at
6 all.

22 But even just considering the total of 38.5, we have
23 evidence that, you know, I think is what the jury relied on
24 that there were -- payments were jointly from those entities
25 to Mr. Lopez totally 4.1 million. And then that got disbursed

1 differently to different parties.

2 But if you consider that they have a contract for
3 38.5 million altogether, again, I'm looking at this
4 altogether, and they're willing to pay out 4.1 to obtain those
5 contracts, and they may have had expectation outside of more
6 in the future , but at least looking at it that way now, it
7 would seem to me that at the very, very least there is a
8 profit greater than 4.1 to be made in the case, otherwise why
9 would you pay that much out if you weren't going to gain more
10 than that.

11 So I don't think the more would be \$100, because it
12 doesn't seem to be that you'd be willing to run the risk here
13 for \$100, I think it would be something substantially more
14 than \$100. And it might very well be substantially more than
15 \$4 million. But totally it would be something more than \$4
16 million if you expected to gain from these contracts,
17 otherwise why would you be willing to pay that much to obtain
18 these contracts.

19 And so my inclination is to say that that would be
20 the amount that we're looking at here. And I don't know if
21 the Government has accepted that position. I know that you
22 objected initially to what the valuation was in the PSR with
23 the 4.1. But I'll hear from the Government to see where you
24 stand at this point.

25 MR. GULLOTTA: Thank you, Your Honor. The

1 Government agrees that 4.1 million is the correct number to
2 use to determine the increase under the table in 2(b)1.1. I
3 think when submitted out objections they were sort of --

4 THE COURT: And I'm sorry, the Defendants may be
5 seated themselves, and, Counsel, if you want to sit until
6 you're addressing the Court, you may do so.

7 MR. GULLOTTA: And they're sort of prospective
8 objections, and by that I mean to the extent the Government
9 were able to determine the net profit, the net value of the
10 38.5 or whatever it was million dollar contracts, that number
11 would likely be the highest number and therefore the
12 appropriate number to use. Because under 2(c)1.1(b) (2) it
13 instructs that you look at either the value of the payment,
14 the benefit received, and that's what the contract value would
15 have been, the value of anything obtained by a public
16 official, or the loss to the Government.

17 With respect to the value -- the benefit of the
18 thing to be received, it's the net value. So we would need to
19 show what the contractors received minus their costs. And the
20 Government's not prepared to do that.

21 THE COURT: And I don't believe it can be done.

22 MR. GULLOTTA: We don't have enough information for
23 that. So I don't think we can use the benefit received or to
24 be received in return for that payment. With respect to the
25 loss amount, as the Court just noted, the City of Weslaco has

1 provided that document that we all looked at but it's somewhat
2 of an estimate, it's not exact. It lists I think \$10 million
3 as an expected loss, but it's by no means I think strong
4 enough evidence of what the loss to the Government is. So I
5 don't think we can use loss to the Government either.

6 I think that leaves us with the value of the
7 payment, and the payment is the \$4.1 million that the
8 contractors gave to Leo Lopez which Leo Lopez then used to
9 orchestrate the bribery scheme that the jury rendered the
10 verdict on. So he kept a portion of that 4.1 million, and
11 then funneled the remainder of it downstream through the
12 Defendants to the public officials.

13 So the value of the payment, which is the first one
14 listed here, is \$4.1 million and the Government believes
15 that's the correct (indiscernible).

16 THE COURT: I will say that I think another way of
17 looking -- you know, I think I've read every 5th Circuit case
18 on the issue that was probative here, but so the 5th Circuit
19 has talked about in these situations looking at fair market
20 value and so in looking at that it kind of goes back to -- you
21 know, you said it in slightly different language, but what the
22 Court is saying is that there's -- it's very difficult like in
23 this case to measure the value of the services the City did
24 receive.

25 Presumably they'd received some services for these

1 contracts, you know. I don't have anything to show what those
2 services were, but presumably they'd received some services.
3 And presumably they -- had they gone out on the open market so
4 to speak and engaged in competitive bidding, they presumably
5 would have had a better deal here. So you can't really deduct
6 the value of the services from the total contract price, we
7 don't -- because we don't have that value of the services.

8 But so going back to my very simplified assessment
9 here that at the very least you would think it's 4.1 that
10 they -- more than 4.1 that they were going to profit here.

11 So, Mr. Peña, with that understanding do you want to
12 go first?

13 MR. PEÑA: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. PEÑA: As far as like I do believe the
16 determination for the calculation on the loss amount is a
17 multi-step analysis and that Step 1, my understanding is we're
18 at, which track we're going to take. I do agree with the
19 Government at this point, which is if we were to look at the
20 various tracks that are put before us, the amount of payment,
21 which would be the 4.1, is the beginning point. So initially,
22 you know, we agree with that step in the process, Your Honor.

23 THE COURT: And we speak to that step in the process
24 just saying that for Mr. Quintanilla that would be the amount
25 or there would be something -- a second or third step.

1 MR. PEÑA: Yeah, a second or third step, Your Honor,
2 because ultimately the analysis begins -- well, where do we
3 start? Do we start with no value? I would ask the Court to
4 elaborate. But the first step is, Okay, if we can't determine
5 this one and we can't determine the loss, then we start here.

6 THE COURT: Okay.

7 MR. PEÑA: So starting here at the 4.1 as the
8 number.

9 THE COURT: Okay.

10 MR. PEÑA: Then the next consideration, which I
11 don't know if you want me to address it now --

12 THE COURT: I just want to -- because I wanted to
13 look at value add.

14 MR. PEÑA: Okay, Your Honor. So the next step in
15 the analysis then, and there's some cases across the different
16 circuits on this issue, which is do we -- should the Court
17 hold Mr. Quintanilla accountable for the rest of the co-
18 conspirators, which is where big dispute is --

19 THE COURT: Okay.

20 MR. PEÑA: -- because our dispute is although the
21 Court starts at 4.1 million, he should only be held
22 accountable for what he actually benefitted. And we cite the
23 cases there, because you look at a number of factors to say
24 was he knowledgeable of the conspiracy in total, did he assist
25 the rest of the co-conspirators. There are multiple

1 conspiracies as far as if we look at the evidence that's
2 presented at trial, Mr. Quintanilla had a relationship with
3 Mr. Tafolla.

4 The evidence at trial was that there was an
5 arrangement between Mr. Quintanilla and Mr. Tafolla. The
6 evidence indicates that Mr. Quintanilla received \$85,000 from
7 Mr. Lopez and that he then distributed that. There was no
8 evidence that there was an agreement or any understanding
9 between Mr. Quintanilla and Mr. Lopez. The Government drew
10 inferences.

11 THE COURT: Of Mr. Quintanilla and Mr. Lopez?

12 MR. PEÑA: That's correct, Your Honor.

13 THE COURT: Okay.

14 MR. PEÑA: The issue is, and one of the --

15 THE COURT: I'm sorry, I'm having a hard time with
16 that one because the payments came through Mr. Lopez so how is
17 it that you claim there's no evidence --

18 MR. PEÑA: This was the dispute in the trial, Your
19 Honor. So --

20 THE COURT: But the jury came back.

21 MR. PEÑA: Well, and I understand that. That's why
22 I'm not contesting that.

23 THE COURT: All right.

24 MR. PEÑA: And so in order to discuss the hearsay
25 type evidence because the Court can consider hearsay during

1 sentencing, that there was evidence that we attempted to enter
2 into trial. Now that's a fight for another issue.

3 But the gist of that was that Mr. Lopez in a
4 recorded statement, which was one of the wires, was talking to
5 Mr. Quintanilla and he told him, I don't know if you paid, you
6 know, I don't know if you paid Mr. Tafolla. But if they're
7 asking questions, you need to tell me, did you pay him. And
8 at that time he was attempting to elicit some type of
9 admissions from Mr. Quintanilla. Now he wants the answer, it
10 was hearsay at trial --

11 THE COURT: But even assuming that we look at that,
12 okay, obviously we get -- we have evidence that Mr. Tafolla
13 was paid by Mr. Quintanilla.

14 MR. PEÑA: That's correct, Your Honor.

15 THE COURT: Okay. Okay. So this is not a situation
16 where any one of these entities paid Mr. Quintanilla directly
17 and then separately paid Mr. Lopez who then paid Mr. A.C.
18 Cuellar, in which case your argument about he shouldn't be
19 held accountable for the entire amount would make a lot of
20 sense because you could then argue that, look, there's the
21 conspiracy over here involving Mr. Lopez and Mr. A.C. Cuellar
22 and we have a separate conspiracy here where the same
23 entities, you know, happen to be paying Mr. Quintanilla who
24 then pays Mr. Tafolla.

25 But we have Mr. Lopez being the one person who's

1 receiving these monies from these entities and then moving
2 forward. So --

3 MR. PEÑA: And the evidence --

4 THE COURT: -- I hear you but I don't agree with
5 you.

6 MR. PEÑA: Well, no, I understand, Your Honor. So,
7 look -- and actually I have -- if I can just to rule out
8 (indiscernible) and to help assist the Court during my
9 argument. If I can --

10 THE COURT: To me or --

11 MR. PEÑA: Yes, here, Your Honor.

12 THE COURT: Yes, yes, to Ms. Guillen, please.

13 MR. PEÑA: Now as you recall during the trial, and I
14 think the evidence that's been elicited so far in the case is
15 that the Government was attempting to establish there was a
16 conspiracy, and you can see on the left hand side we have here
17 which report we reference that there was a potential
18 conspiracy between the construction company, the engineers and
19 Mr. Lopez, and the evidence of this is where he received the
20 4.1 million. Now we didn't get into it at trial, there was
21 limitations at trial regarding that.

22 Now the only other evidence is you can see there's
23 two tracks. And this is significant for Mr. Quintanilla.
24 There was no evidence and there has been no evidence in this
25 case that, number one, Mr. Quintanilla had any knowledge

1 whatsoever about A.C. Cuellar's relationship to Mr. Lopez,
2 John Cuellar's relationship, and I think even at trial when
3 there was ever any questions about did they know
4 Mr. Quintanilla, they did not know Mr. Quintanilla.

5 So, and that's why I broke this up into three parts,
6 because that first part is, and that's part of the argument,
7 that any amount that was paid to Mr. Cuellar and ultimately
8 Mr. John Cuellar, according to the law should not be applied
9 to Mr. Quintanilla. There's no evidence to support that.

10 Now you should go to the 4.1 million which would
11 have been the net of what Mr. Lopez kept, if we're using the
12 calculations that --

13 THE COURT: What he received is what I understand.

14 MR. PEÑA: I understand, what he received. But,
15 well, the only -- then it would be an argument. Now, the only
16 evidence is he did receive checks, but he received checks to
17 be boots on the ground to go out there and go to City
18 meetings, and there was no evidence that there was an
19 agreement between Mr. Lopez and Mr. Quintanilla that say, Hey,
20 I'm going to give you these checks, and these checks are going
21 to be thank yous to pay Mr. Tafolla.

22 Now the argument I would make --

23 THE COURT: There is no evidence that the checks
24 were for him to be boots on the ground. I mean --

25 MR. PEÑA: Well, he's only --

1 THE COURT: -- we didn't have a -- we didn't have a
2 defense that shows any of that.

3 MR. PEÑA: Well, and there's no evidence to the
4 contrary. There was no evidence --

5 THE COURT: Well, yes, there's evidence that these
6 were bribe payments that he was receiving to Mr. Lopez to pass
7 on to Mr. Tafolla.

8 MR. PEÑA: The only evidence is -- no, there were --
9 because Mr. Lopez did not testify, there was evidence of
10 checks from Mr. Lopez to Mr. Quintanilla here.

11 THE COURT: No --

12 MR. PEÑA: It was --

13 THE COURT: -- Mr. Tafolla did testify that he met
14 on various occasions with Mr. Quintanilla and Mr. Lopez was
15 present and Mr. Lopez tendered, you know, to Mr. Quintanilla
16 who in some instances tendered it immediately to Mr. Tafolla.
17 So --

18 MR. PEÑA: And that's where -- just so that we can
19 get very specific (indiscernible), Your Honor, it was here.
20 There was evidence that they met, there was evidence of
21 conversations between Mr. Quintanilla and Mr. Tafolla. And
22 whether Mr. Quintanilla and Mr. Tafolla had an agreement, the
23 testimony of Mr. Tafolla, which was not specific and couldn't
24 be specific as to date and time, amount --

25 THE COURT: Yes.

1 MR. PEÑA: -- nothing like that, just said --

2 THE COURT: No, but --

3 MR. PEÑA: -- it was something that I told --

4 THE COURT: -- the jury -- but the jury believed --

5 MR. PEÑA: No, I understand.

6 THE COURT: -- them apparently.

7 MR. PEÑA: No, no, I completely understand that.

8 But the issue is was there a relationship that we can define
9 and that purport to make findings on related to Mr. Tafolla
10 and Mr. Quintanilla.

11 THE COURT: Well --

12 MR. PEÑA: And that's the starting point, Your
13 Honor --

14 THE COURT: Okay.

15 MR. PEÑA: -- because otherwise the Government
16 needs to say, No, we have definite evidence that we can show
17 that --

18 THE COURT: Well --

19 MR. PEÑA: -- and according to all factors that he
20 was aware of a larger conspiracy that involved Mr. Lopez and
21 involved the construction company, et cetera, et cetera, and
22 it's their burden --

23 THE COURT: No.

24 MR. PEÑA: -- to demonstrate that.

25 THE COURT: No.

1 MR. PEÑA: Which they can't.

2 THE COURT: So I'll say a couple of things and we'll
3 move on to whatever you think is the next step for
4 Mr. Quintanilla. So, one, I do think, one, you can make
5 reasonable inferences from the evidence, and I do think that
6 even if Mr. Tafolla was not able to say, I met on, you know,
7 February 9 of, you know, whatever year and, you know, we met
8 at this location and, you know, even if he wasn't able to go
9 into details, what he did say was, On some occasions I met
10 with Mr. Quintanilla and Mr. Lopez, Mr. Lopez tendered over to
11 Mr. Quintanilla, in some instances there were checks, some
12 instances there was cash, tendered that over, in some
13 instances he then and there gave me half of that amount.

23 MR. PEÑA: And the valuation, Your Honor, then the
24 test for the Court, and I put this on the first page, and
25 actually I have it under 1B for the Government ahead. But the

1 issue there is jointly -- a joint enterprise. And again, this
2 dovetails into what we're talking about, because the amounts
3 that I've seen is -- should amounts be deducted from
4 Mr. Quintanilla.

5 If we start at the 4.1 million, should he be held
6 accountable for everybody's, and I think I pled, Your Honor,
7 A.C. Cuellar and John Cuellar had not been included, those
8 should be deducted from this. And then the issue we have with
9 Your Honor is of course with Mr. Lopez and Mr. Quintanilla.

10 So ultimately that's the argument, Your Honor. It's
11 just that we should be deducting amounts because in the end
12 the total amount from all the evidence, and I know the
13 Government started at 38 million and then we go to 4.1
14 million, there's even more that's going to be gained by the
15 construction company, et cetera.

16 But in the end Mr. Quintanilla over several years
17 only received \$85,000, and that's just the reality of the
18 situation as it relates to Mr. Quintanilla, which evidence the
19 fact he's not a leader, it's like -- which we can address at
20 some other --

21 THE COURT: And we'll address it. All right.

22 Okay. Thank you, Mr. Peña.

23 Okay. I'll turn -- I am sorry, Counsel, I forgot
24 your --

25 MS. ORR: Cynthia Orr.

THE COURT: Orr. Okay. Ms. Orr.

MS. ORR: Thank you, Judge Alvarez. I'm approaching the Court with Defendant's Exhibit 1 --

THE COURT: And hand it to Ms. --

MS. ORR: -- comments -- yes, Your Honor.

THE COURT: -- Guillen.

MS. ORR: -- some comments that the Court made and I want you to put your thinking cap and also to put in the Record for the appeal, yes. This is a declaration by John Shaw who I know, Judge Alvarez, you know attended the trial for Carlos Garcia, and he is making the --

THE COURT: I'm sorry, this is a declaration?

MS. ORR: From Mr. John Shaw.

THE COURT: And why wasn't this filed previously?

MS. ORR: Because he finished it --

THE COURT: Okay.

MS. ORR: -- he signed it last evening.

THE COURT: So now I have a deadline for submission of anything that is to be considered by the Court because I take a lot of time to look at everything.

MS. ORR: Yes, Your Honor.

THE COURT: Not just on a big case like this, but for a little case, even one with a range of zero to 6 months. Okay. I look at all this material ahead of time. And I'm not inclined to sit here and go through this now when I had a

1 deadline in place for addressing all of this and filing all of
2 this.

3 MS. ORR: I understand, Your Honor. This is what I
4 was able to get prepared last evening after I reviewed all the
5 transcript that I was able to obtain, and this makes the point
6 that we should not compare, and I'll say this orally, we
7 should not compare a bid process contract with what happened
8 here which as Your Honor knows from the testimony, Judge
9 Alvarez, that the testimony was that this was a health and
10 safety concern, and so that this was not subject to the normal
11 bid process. It had to be hastened so that Weslaco could have
12 a working water system and sewage treatment system that was --

13 THE COURT: The point of the argument is that the
14 City had this notice way back when, you know, they were slow
15 moving to begin with, the point of your argument is, an
16 inference at least, that the reason it was done as an
17 emergency was because, you know, already there was -- I don't
18 know if there was actual evidence of actual payments because
19 the Government concedes that they believe some of the story it
20 was quite some time before what they actually ended up
21 indicting on, but the point of the argument is that that's
22 part of sort of the overall scheme here is to have it be done
23 in such a manner that they didn't have to go out for open
24 bids.

25 MS. ORR: Your Honor, all the testimony at the trial

1 was that this had become an emergency situation that Weslaco
2 was on notice from TCOQ from 2004, it was about to be fined on
3 a regular basis. I think if memory serves, Judge Alvarez,
4 from around 2008 to 2009 and that there was a unanimous vote
5 by the commission that this was an emergency situation. So I
6 really don't think that there's any testimony that disputes
7 that. I understand what the Court is saying, and I remember,
8 you know, having a sense that that was the expectation, but
9 the testimony did not bear that out.

10 And so I would agree with the Court that we don't
11 know where that civil lawsuit will end up, if anywhere, but
12 the -- making some sort of analysis that the City did not get
13 the benefit of this and that we can somehow determine in what
14 way they did not is not a way to assess the loss.

15 I would join my colleague's able arguments,
16 Mr. Peña's. I agree with him about we have this separation,
17 bifurcation in terms of the proof about payments going from
18 Leo Lopez to A.C. Cuellar and then to John Cuellar appears
19 completely divorced from what was happening between Leo Lopez,
20 Mr. Quintanilla and Mr. Tafolla.

21 And my reading of the transcripts, Your Honor, was
22 that the only interaction Mr. Tafolla had with Mr. Cuellar was
23 to actually try and contact him to mend actual physical fences
24 in Weslaco, nothing related to this water treatment plant, or
25 sewage treatment plant building and repair, so that like

1 Mr. Peña I would implore the Court to take that two-step
2 analysis. We start with the 4.1 million paid by Leo Lopez to
3 others for consulting, for bribes, because there was testimony
4 there certainly was some consulting.

5 Then we take it down to A.C. --

6 THE COURT: Actually there was no testimony that any
7 of this was consulting payments.

8 MS. ORR: I --

9 THE COURT: I know that that's a defense but there
10 was no defense presented to that effect.

11 MS. ORR: Well, then let me -- let me talk about it
12 this way, Judge Alvarez, the testimony by John Cuellar was
13 that he received \$405,000 and that's the amount he received in
14 bribes. And, Your Honor, that's the value of the payment that
15 I want this Court to consider when evaluating the guidelines
16 because that we know --

17 THE COURT: Well, but wait a minute --

18 MS. ORR: -- that might be proved --

19 THE COURT: -- but that might be an argument that
20 could be made for Mr. John Cuellar, but that's not what
21 Mr. A.C. Cuellar received. He received --

22 MS. ORR: That's correct.

23 THE COURT: -- much more than that.

24 MS. ORR: He did, Your Honor, and the testimony was
25 that he did receive much more in checks paid to him, but he

1 wasn't someone that could affect the voting of the contract,
2 other than the value that --

3 THE COURT: Well, Mr. John Cuellar, certainly he
4 was. And I guess that was -- I mean that's the whole gist of
5 this case.

6 MS. ORR: When we're here on a bribery case, Your
7 Honor --

8 THE COURT: Right.

9 MS. ORR: -- and it's the quid pro quo as I argue
10 at Page 6 of my memo, this is this for that, and so it was
11 405,000 for Mr. Cuellar's votes, and that's what I'm
12 encouraging the Court to find the amount there.

13 THE COURT: But Mr. A.C. Cuellar was in this because
14 he had access to Mr. John Cuellar. There is no evidence and
15 was no presented that Mr. A.C. Cuellar performed any
16 legitimate consulting work for any of these entities that
17 would entitle him to a single penny.

18 MS. ORR: I understood that there was testimony that
19 he was influential and able to make introductions and
20 important in that respect so that there is some evidence --

21 THE COURT: That was --

22 MS. ORR: -- of consulting --

23 THE COURT: -- that was the point of the question,
24 but nobody testified that that was, in fact, the case.

25 MS. ORR: I understood that there was testimony in

1 that regard, and, Your Honor, I did not attend the trial like
2 yourself, so, you know, I guess we'll let the Record speak for
3 itself, Your Honor. But what I would say, Judge Alvarez, is
4 that we're talking about quid pro quo and that's a really
5 important thing to focus on on these honest services that the
6 case is, and I'm just arguing to the Court respectfully that
7 the 405,000, that's the quid pro quo and I would ask the Court
8 to consider that when it's determining the value of the
9 payment, because that's the payment at issue in this case.

10 THE COURT: I'll let you respond to it, too. Okay.

11 MR. GULLOTTA: Very good.

12 THE COURT: But, then, no, I want to hear lastly for
13 Mr. John Cuellar.

14 MR. MONTALVO: Your Honor, we don't have an issue
15 with the opening bid.

16 THE COURT: Okay.

17 MR. MONTALVO: 4.1 million is not an issue.

18 THE COURT: Okay. All right. Then --

19 MR. MONTALVO: Our issue is with the amount that
20 Mr. Cuellar is being alleged to have benefitted from, but we
21 did that in argument, Your Honor, in our filed -- in our
22 objection.

23 THE COURT: Yeah.

24 MR. MONTALVO: So we'll take that up, Judge.

25 THE COURT: Okay. All right. Well, just to be

1 clear, Mr. Montalvo, if I determine -- I can determine, well,
2 two things, I can determine that the same amount applies
3 across the board, or I can determine it individually. If I
4 determine that it applies across the board, this is your
5 opportunity to --

6 MR. MONTALVO: Well --

7 THE COURT: -- to address it.

8 MR. MONTALVO: -- if that's the case, then, Your
9 Honor, I would argue that -- and I know that this is something
10 that the Court already addressed, but in all -- in its
11 entirety, Your Honor, there is quite frankly certain
12 agreements between certain parties in this grand scheme that
13 are taking place without the knowledge of others, specifically
14 Mr. Cuellar.

15 Being that the trial, as the Judge -- Your Honor
16 very well knows, when he was advised of the amount of benefits
17 that were received by A.C. Cuellar, he was just as surprised
18 as anyone else because he had no knowledge about the
19 agreements that he and Mr. Leo Lopez had going on at the same
20 time. I understand that Leo Lopez paid Mr. A.C. Cuellar, A.C.
21 Cuellar through this Quality Ready Mix would pay Mr. Cuellar
22 the alleged retainer fee for corporate counsel so to speak.

23 But at the end of the day the only benefit received
24 by Mr. Cuellar, the only amount of bribe that can be
25 established by his association with Mr. A.C. Cuellar would be

1 the \$405,000, which is what the Government presented at trial.
2 Other than that, the 4.1 million to be assessed and valued
3 against Mr. Cuellar I think is very, very far reaching,
4 because at the end of the day, as the Court will also recall,
5 Your Honor, Mr. Cuellar was approached by Mr. Leo Lopez and
6 A.C. Cuellar when he wanted to leave the City of Weslaco, when
7 he wanted to leave the City commission altogether, and he was
8 told, Stick around, stay here, pay him.

9 And that's one of the benefits -- that's the -- in
10 the grand scheme of things that's the only benefit Mr. Cuellar
11 received was the \$405,000. I believe that's the valuation
12 that we should be assessed against Mr. Cuellar.

13 THE COURT: All right. Thank you.

14 All right. You may respond.

15 MR. GULLOTTA: Very -- thank you, Your Honor, very
16 briefly because I think the Court has already zeroed in on
17 this. The jury convicted these two Defendants of a
18 conspiracy, and the conspiracy was alleged to have involved
19 Leo Lopez, as well as others. So they've all already been
20 convicted of a conspiracy, and the conspiracy involves every
21 Defendant in this room, plus Leo Lopez, plus Jerry Tafolla.

22 The law is pretty clear, they are responsible for
23 the reasonably foreseeable amounts involved in the conspiracy.
24 Even according to Mr. Peña's math. There is a line drawn from
25 every Defendant to Leo Lopez, including the two trial

1 Defendants, are immediately connected to Leo Lopez. So no one
2 is trying to assign any value that is apart of another
3 conspiracy.

4 Even if you just look at the conspiracy between
5 Mr. Tafolla, Quintanilla and Lopez, it's 4.1 million, because
6 that's how much Mr. Lopez got. It's reasonably foreseeable
7 that the person at the beginning of the stream is going to
8 receive a larger amount and break off pieces of those bribery
9 proceeds and share them downstream. And that's what the
10 Government's argument is. Thank you.

11 THE COURT: Okay. So the Court, again, has looked
12 at it very closely, I read through all the objections, I read
13 through the memorandums, I, as I said earlier, looked at a lot
14 of cases, and ultimately I am satisfied, and it's isn't, you
15 know, that I started out with any figure out in mind, but
16 having gone through all of that ultimately I am satisfied that
17 the proper calculation pursuant to the guidelines in this case
18 is the 4.1 that was assessed, the enhancement was assessed in
19 the guidelines. So that I do believe applies across the
20 board.

21 And obviously I'll hear individually from attorneys
22 on other issues, but that one, the objections to that
23 enhancement is overruled, it is as calculated in the
24 guidelines. So with that then I'm going to go individually
25 now Defendant-by-Defendant and I want to start with

1 Mr. Quintanilla.

2 MR. PEÑA: Yes, Your Honor. So going back there
3 are -- I want to focus in --

4 THE COURT: So let me -- a couple of things for
5 Mr. Quintanilla that I see. There's some things that I
6 believe I can --

7 MR. PEÑA: Already agreed.

8 THE COURT: -- agree on already. Let me look at my
9 notes and see.

10 (Pause in the proceedings.)

11 THE COURT: No, I don't think I agree, so let's move
12 forward.

13 MR. PEÑA: Okay, Your Honor. Going back to the
14 chart and the first day I outlined 4 basic arguments. We've
15 already covered 1 and I think 3. The first one, and I marked
16 there the guidelines calculations under the letter A which is
17 there was an assessment that this was more than one bribe.
18 And our position is that it should be treated as one bribe.

19 The case law is simple, it's if you have related
20 payments, then the related payments should be treated as one
21 when it is towards the same purpose, i.e. the same conspiracy,
22 the same scheme, and that's what we have in this case. It
23 would be unfair, it's against state law and against the
24 commentary in the guidelines that say, Well, if you broke up
25 that same payment for the same purpose in different steps,

1 we're going to treat one as an individual bribe. And that's
2 just not consistent and that's what we outlined in our memo,
3 and that's the argument today. We believe that the Court
4 should reduce it by 2 points that was assessed in the PSR
5 because of one bribe.

6 THE COURT: So I did look at it, and this is the one
7 that Mr. A.C. Cuellar also argues, so if you want to jump in,
8 Ms. Orr, I'll have you -- hear from you as well before I
9 address it.

10 MS. ORR: Thank you, Your Honor. I would just join
11 with what able counsel, Mr. Peña, said, Judge Alvarez, and we
12 take the same view.

13 THE COURT: Okay.

14 MR. MONTALVO: Your Honor, we also addressed that
15 objection in our objection.

16 THE COURT: All right. Thank you. So I did look at
17 that comment a little closer and I think the reason I'm
18 convinced that the plus-2 is warranted here is because we have
19 different actions going on and this is over the course of more
20 than one year here. The action from the City council was not
21 a one-time action, then, Okay, we're done. And even though
22 the contract may continue moving forward, and there may be
23 down the road payments that are being made.

24 Or there's -- and I know it's separate context, but
25 for the sake of brevity here, the \$38 million contract, even

1 if the City is making payments down the road on that contract,
2 I don't think we can say in this case that the bribes were for
3 the initial awarding of the contract even though that contract
4 is paid out over time, that there was no evidence of these,
5 why payments were then corresponding as that contract gets
6 paid down, we'll pay you this much more.

7 I think in this case the evidence, and again, maybe
8 not said in so many words, but the inferences are that
9 basically they want to ensure that this was awarded to those
10 entities, and for anything else that came up along the way
11 related to the waste water treatment plants was awarded to
12 these entities. And we have -- over the course of time we
13 have the initial award, we have some modifications, we have
14 the preliminary studies being done, all of that going to these
15 entities. And so these I do not believe are payments for one
16 bribe, but rather separate bribes along the way.

17 MR. PEÑA: Could I just say one important thing as
18 it relates to Mr. Quintanilla? So a couple of things, the
19 time periods, it's not commonly called the Defendants and co-
20 conspirators in this case, but the time period is different
21 for the different Defendants. And Mr. Quintanilla's was
22 alleged to be from 2011 to 2014.

23 Now at trial, there was an amendment to reduce that
24 time period. So as far as the number of payments, it is not
25 Mr. Quintanilla that is receiving payments all throughout the

1 long period of time, as far as it is alleged as to the
2 bribery. It was then reduced to a small period of time, I
3 think 2013 to 2014 -- oh, and of course the Government has
4 produced the payments at trial. And that's the evidence that
5 was actually presented.

6 So to say as far as his purpose, his one purpose as
7 it related to Mr. Tafolla, it was not this long ongoing type
8 alleged conspiracy the Government has since 2008 to 2014.

9 THE COURT: So the conspiracy date as amended right
10 before trial was from January 2011 moving forward for the
11 conspiracy. Okay. But keeping in mind that the Court, for
12 purposes of sentencing, can consider evidence beyond what was
13 presented to the jury.

14 But nonetheless even if we have -- and this is
15 from -- we're going through a lot of material here -- by my
16 notes we have the longest 2011. The preliminary report from
17 CDM being approved, Mr. Tafolla voting in favor of that
18 preliminary report. We have him then a month or so, not even
19 quite a month later approving the pre-construction contract
20 for CDM and the Briones contract that was re-negotiated and he
21 voted in favor of those. So those are separate actions. We
22 have the Lefevre contract in the middle of 2012, Mr. Tafolla
23 voting in favor of that, again, separate actions.

24 MR. PEÑA: I understand that, Your Honor. And
25 that's -- those are the actions of Mr. Tafolla. Now the

1 evidence, which the Government has the burden here, well, what
2 was the evidence of the actual bribes. One was the testimony
3 of Mr. Tafolla. Mr. Tafolla's testimony at trial was he
4 believes he received between 10- and \$15,000 during the entire
5 period of time.

6 There was no evidence whatsoever as far as the
7 timing of these payments as far as if they occurred at the
8 time that the votes occurred. There was absolutely no -- he
9 couldn't remember when he got them, couldn't remember the
10 amounts he got, he doesn't know --

11 THE COURT: Okay. Well, Mr. Peña, the jury
12 determined that he took payments for bribes.

13 MR. PEÑA: That is right, Your Honor.

14 THE COURT: So --

15 MR. PEÑA: At sentencing it comes to you now.

16 THE COURT: Right.

17 MR. PEÑA: Because you heard -- you have the benefit
18 of all of the evidence that's been presented before you,
19 including the exhibits in our memos --

20 THE COURT: Right.

21 MR. PEÑA: -- so that you can take at the time of
22 sentencing -- although the jury did convict, and we accept
23 that for the purpose of sentencing, Your Honor has a lot more
24 information before it.

25 THE COURT: But it would be -- you know, common

1 sense sometimes does play a role here, it would not make any
2 sense to say, you know, he's taken the actions that he's being
3 bribed for, you know, here, but just randomly he's receiving
4 money a year later. Okay. So it would just make sense that
5 he's receiving those bribes for the action that's expected of
6 him, which are these votes.

7 MR. PEÑA: But there needs to be a finding from Your
8 Honor and then maybe present evidence to support that finding
9 from Your Honor. And then --

10 THE COURT: I think that inference can be made from
11 the evidence that was presented at trial with the jury having
12 convicted him on these counts, and keep in mind that they did
13 have dates of the votes, they did have a lot of that -- well,
14 all of that information in front of them through the minutes.

15 MR. PEÑA: But the test is the bribe, and there's no
16 evidence of the bribe. And the bribe --

17 THE COURT: Was --

18 MR. PEÑA: -- when it was amended and you tried it
19 at trial, the bribes were alleged to have occurred much later
20 than those votes.

21 THE COURT: Well, no, you said that he couldn't say
22 when the bribes occurred. So --

23 MR. PEÑA: Right. But what price -- what the
24 Government charged --

25 THE COURT: Yeah.

1 MR. PEÑA: -- and what the Government presented to
2 the jury, it then shortened --

3 THE COURT: Well --

4 MR. PEÑA: -- that time period --

7 MR. PEÑA: I can go through the votes for
8 Mr. Tafolla but that's not when the Government charged, and
9 they're the ones when -- they actually charged the bribery of
10 the case they reduced the --

11 THE COURT: The conspiracy is what we're talking
12 about.

13 MR. PEÑA: But it's the conspiracy for the bribery.

14 THE COURT: Right.

15 MR. PEÑA: And the only evidence that was presented
16 to the jury was that alleged bribery had occurred in the last
17 tail end of this, not during the time of any of those votes.
18 Mr. Quintanilla -- there's no evidence against Mr. Quintanilla
19 individually. And I speak of Mr. Quintanilla as far as when
20 bribes or if bribes occurred during the period or how many
21 bribes actually occurred.

22 THE COURT: All right. Well, the Court does believe
23 that we have multiple bribes here, so that adjustment is
24 overruled.

25 MR. PEÑA: Thank you, Your Honor.

1 THE COURT: All right. Next from Mr. Quintanilla,
2 Mr. Peña.

3 MR. PEÑA: Next, Your Honor, is, as labeled under C
4 in our memo, we're asking for a -- the PSR said no role
5 adjustment downward, we do believe that the evidence that was
6 actually presented in the case, and there's multiple factors.
7 One, with a minimal gain by Mr. Quintanilla. In the grand
8 scheme, no profit we're talking about millions. And
9 ultimately all any evidence is, and I think there's no
10 dispute, Mr. Quintanilla received \$85,000. That's one factor.

25 THE COURT: In that regard, again, I look at these

1 things very closely, you know, look at, you know, the factors
2 that the guidelines provide the Court should consider, I have
3 often expressed a disagreement with many of those factors, and
4 in this case, you know, I have some disagreement as well.

5 But we're talking here about whether this Defendant
6 is substantially less culpable than the average participant in
7 this offense. We're not talking about him being involved in
8 the actual procurement of these contracts, in which case you
9 might say he knew nothing about what was actually being, you
10 know, put forward, what the times of the contracts were, what
11 the gain would have been to the entities here.

12 We're looking at the bribery scheme. And in the
13 bribery scheme I don't see how, you know, he is substantially
14 less culpable than the average participant, the participants
15 here are the companies themselves and, you know, who
16 individually from those companies I don't know, but the
17 companies themselves, Mr. Lopez, Mr. Quintanilla, Mr. Cuellar,
18 Mr. Tafolla, and Mr. John Cuellar. So those are the
19 participants.

20 You know, you're really sort of looking at this,
21 although I don't think Mr. John Cuellar may bring my words
22 back to haunt me, but, you know, if you're looking at a
23 hierarchy here, you would say, well, really the people at the
24 bottom of the totem pole here are Mr. Tafolla and Mr. John
25 Cuellar, and Mr. Lopez maybe was at the top but I think

1 Mr. Quintanilla and Mr. A.C. Cuellar were the average
2 participants here.

3 MR. PEÑA: And these are the concerns, Your Honor,
4 is the flipside. So in one instance the Court will say, Look,
5 I'm going to look at this as being a grand total conspiracy
6 and I'm taking into consideration the entire conspiracy. And
7 then Your Honor in this instance saying, Well, I'm not looking
8 at the conspiracy because if you look at the conspiracy --

9 THE COURT: Well, no, that's why I named all those
10 people.

11 MR. PEÑA: Well, but then you're saying it has to do
12 with the bribery and it would be difficult for you to say. If
13 we're looking at the conspiracy --

14 THE COURT: Well, no, then why -- 'cause this is
15 what I've been talking about all this time.

16 MR. PEÑA: Well, and that's what I'm saying, the
17 conspiracy as far as, you know, like for the Government it's
18 the totality of this entire thing. So, but I understand, Your
19 Honor. I mean our position is when you look at the grand
20 scheme and all the participants and all the gains of all the
21 participants and all the involvement of the participants,
22 Mr. Quintanilla is --

23 THE COURT: Well, I don't think I left anything out.
24 I talked about the entities and whoever. Obviously we
25 wouldn't be including every employee of those entities.

1 Right? It's whoever there made the decision to engage in this
2 bribery scheme. So I don't think I've left anybody out here.

3 MR. PEÑA: I understand, Your Honor. Our position
4 is that he's the low man on the totem pole, Your Honor. And
5 as per the law he's entitled to at least a reduction of 4
6 points or a role adjustment for that minor participation.

7 THE COURT: All right. That objection is overruled.

8 MR. PEÑA: Thank you, Your Honor.

9 THE COURT: All right. All right. Mr. Peña, next?

10 MR. PEÑA: The last one on the calculation is on the
11 obstruction chart, Your Honor, with 2 points added on the
12 obstruction. As (indiscernible) her testimony, of
13 Ms. Gonzalez, and is a very ambiguous type testimony,
14 combative at times. But ultimately, and we cited this in our
15 motion, which is, you know, it was very consistent as to what
16 occurred, and ultimately it was all around one word, which was
17 the word consultant, and he took it one way, Mr. Quintanilla
18 as far as he understood it was meaning it another way, and as
19 a result he'd say open and it's quoted, we quoted this in our
20 motion, he said, man, it's semantics, you know? It was an
21 issue of semantics.

22 And so his question is, was it misunderstood, was it
23 a misunderstanding? Ultimately he never lied to the FBI.
24 Ultimately there was never was an obstruction. And than him
25 believing that he wanted to use a word, they had a different

1 understanding, there is no evidence of obstruction. As a
2 result we believe the Court should remove the obstruction 2
3 points.

4 THE COURT: I looked hard at that, if ever I think
5 there was a clear instance of an attempt to obstruct, this was
6 it. And I think the reason -- and Mr. Gonzalez at times came
7 across as combative is because I think quite frankly the
8 impression I got was that he was appalled that anybody would
9 have the nerve to come ask him to do this.

10 And I think if we, you know, look at it, you know,
11 very objectively, that there is no question but that he was
12 being asked to mislead at the very, very least the FBI if not
13 to outright lie to the FBI. And I think that was especially
14 demonstrated when Mr. Quintanilla steps out and when the -- I
15 can't remember if it was few minutes or seconds he comes right
16 back in and gives him that parting message which I think
17 leaves no doubt of what Mr. Quintanilla was asking.

18 MR. PEÑA: In response is the Court can consider
19 hearsay. So the full context of the situation. This was a
20 situation -- Your Honor recalls there's an email from my
21 office to Mr. Gonzalez requesting a copy of the checks because
22 we were aware of the checks that Mr. Gonzalez had given to
23 Mr. Quintanilla. Mr. Quintanilla then went to go get copies
24 of those checks that I requested in the case. And this is the
25 letter that was handed over to the FBI.

1 Now -- and this was presented to Your Honor at the
2 time -- there was no question that checks were made, and these
3 were checks during political campaigns, and these were checks
4 that were paid to Mr. Quintanilla to then help with the
5 campaigns and his understanding was he was a consultant for
6 him, helping because Mr. Gonzalez was attempting to become a
7 City official.

8 THE COURT: But see, Mr. Peña, here's the problem,
9 if Mr. Quintanilla believed that, why does he need to go tell
10 Mr. Gonzalez, You need to tell them that I was a consultant
11 for you.

12 MR. PEÑA: Well --

13 THE COURT: If that Mr. Quintanilla -- first of all,
14 again, we don't have testimony from Mr. Quintanilla at all.
15 Okay. But if that was what Mr. Quintanilla believed to begin
16 with, there's no reason to go tell somebody, Oh, you know,
17 keep in mind that these checks that you are giving me were
18 consulting checks, because if that's your position to begin
19 with, you don't need to go tell somebody to do that. And
20 again, even as I noted, you know, his parting message I think
21 to Mr. Gonzalez was quite clear what he expected of him. So,
22 no, I don't --

23 MR. PEÑA: Well, and that's where we had issue with
24 the strength of that testimony, and that's why we're asking
25 Your Honor to consider. I know the jury (indiscernible), but

1 Your Honor can consider beyond what the jury --

2 THE COURT: And quite frankly, again, I had no, no
3 doubts as to Mr. Gonzalez's credibility. So that objection is
4 overruled.

5 MR. PEÑA: Thank you, Your Honor. And as far as --
6 I had three issues, one was the calculations, we were taking
7 the calculations --

8 THE COURT: Right. Now this --

9 MR. PEÑA: -- over my objections, yeah.

10 THE COURT: Yes. Okay.

11 MR. PEÑA: And we'll do the other one --

12 THE COURT: So right now then as it stands, we are
13 where we started in this case, the objections having been
14 overruled, the Court having determined the issue as far as
15 valuation here, and that is a guideline range for
16 Mr. Quintanilla as calculated in the Presentence Investigation
17 Report an offense level of 40, criminal history category of 1,
18 that range is 292 to 365 months. I'll give you a chance to
19 address all other sentencing issues in a minute.

20 I don't think there's any need for the Government to
21 respond at the moment to the objections, but I know you had
22 your own objections here. So, no, so we're looking at the
23 guidelines, I will hear from you on --

24 MR. GULLOTTA: So I think with respect to -- is this
25 with respect to Mr. Quintanilla?

1 THE COURT: Mr. Quintanilla only as far as the
2 guideline calculations.

24 THE COURT: All right. I'll tell you the same
25 thing, you were listening, that I told Mr. Peña, I believe he

1 is the average participant. Even though I think there's a lot
2 of truth to, you know, the specific facts that you point out,
3 I still believe he is the average participant in the scheme.
4 So that --

5 MR. GULLOTTA: Very good, Your Honor.

6 THE COURT: -- objection is overruled as well.

7 MR. GULLOTTA: Thank you.

8 THE COURT: All right. Let me turn then to Mr. A.C.
9 Cuellar.

10 MS. ORR: Thank you, Judge Alvarez. We had made an
11 objection with regard to the initial Base Offense Level
12 assigning a 14 instead of a 12, Judge Alvarez, because
13 Mr. A.C. Cuellar was a public official. We think as we read
14 the description and definition of each of those categories and
15 we get down to the last one where someone doesn't have to be a
16 public official but is assessed this higher starting level,
17 it's clear that the intent is that the person must be a public
18 official with the -- with respect to the offense committed.

19 We don't contest that A.C. Cuellar was a public
20 official, a Hidalgo County Commissioner, at a couple of
21 periods of time during the charged conspiracy. But that that
22 position did not allow him to influence or any -- exercise any
23 decision making authority with regard to the contracts under
24 consideration that are at the heart of the bribery charge.
25 And so therefore we'd respectfully request the Court to start

1 with a Base Offense Level of 12 instead of a 14.

2 THE COURT: See, and now that I -- again, I read
3 through the guidelines, I read through the application notes
4 and we have your beginning Base Offense Level dependent on the
5 Defendant.

6 MS. ORR: Yes.

7 THE COURT: And in this case there's no dispute that
8 Mr. Cuellar was, in fact, a public official during this period
9 of time, not throughout the whole time but at least a good
10 portion of this period of time. So there really is no dispute
11 as to that, and went through the time to see, okay, you know,
12 when you have that application and that starting point, and
13 then you have the application for involving a public official,
14 you know, do you apply both. The latter enhancement is
15 offense specific rather than defendant specific.

16 And here, even though I understand the argument that
17 you made, that last, you know, for definition of category of
18 public official is really a separate one because you have a
19 listing a member of state or local legislature. You have the
20 second one being the officer/employee, you have a local
21 Government. You have the third one being somebody who's
22 already been selected but not yet appointed. And then you
23 have the fourth category being these other individuals that
24 basically have the same responsibilities and discretion as the
25 public official but they're not that.

1 So I don't think that that fourth one is meant to
2 necessarily exclude somebody who is, in fact, a public
3 official, and --

4 MS. ORR: No, no, that's right, Judge Alvarez.

5 THE COURT: -- and I don't think -- and I don't
6 think that the guidelines speak necessarily to a public
7 official who is taking the bribe for action related directly
8 to him personally and his personal -- and his duties as a
9 public official.

10 And I'll tell you why. One of the cases out of the
11 many ones that I have here, one that I have here but I don't
12 remember case names, was one where you have a City mayor in
13 Louisiana who brings together other City mayors to basically
14 all work together in this bribery scheme. And he has this
15 group of mayors and talking to the entities and at some point
16 in time it becomes the state, but anyway he says, We want to
17 exclude this one mayor because he's a straight up guy, he's
18 not going to go along with this, okay, but these other mayors,
19 yes. Okay.

20 There's no -- in that case there's no dispute that
21 that mayor has no official responsibility over any other City.
22 Much of the action there relates to, you know, the other, you
23 know, defendants who were involved, the mayors. So --

24 MS. ORR: Understood, Judge Alvarez. My argument
25 was that this definitional list gives us a flavor of what's

1 intended, and that the argument is that, and our position is
2 that it's the -- number one, although in the guideline --

3 THE COURT: But it says --

4 MS. ORR: -- itself it doesn't say --

5 THE COURT: -- but, no, but it says specifically
6 not otherwise covered. I mean that definition --

7 MS. ORR: Yes --

8 THE COURT: -- specifically says not --

9 MS. ORR: Yes --

10 THE COURT: -- otherwise covered. So if they're
11 covered, we don't need to look at that fourth definition.

12 MS. ORR: I agree, Your Honor, but I just think it
13 informs the tone of what the definition is because it's under
14 definitions and I'm relying on that last one, not to say that
15 A.C. Cuellar fits there, but to say that this tells us it's
16 got to be someone who takes action, they've got to be a public
17 official with respect to the offense conduct. And I
18 understand the case you cited somewhat different, Your Honor,
19 because there these people were joining together and using
20 their position. Again, I think that's related to the offense
21 conduct.

22 THE COURT: Well, and I think what we have here is
23 that actually Mr. A.C. Cuellar joining together with Mr. John
24 Cuellar and using his influence with Mr. Cuellar.

25 MS. ORR: I understand.

1 THE COURT: But Mr. A.C. Cuellar himself being a
2 public official, does anyone have a response on this point?

3 MR. GULLOTTA: Thank you, Your Honor, yes. So I
4 read the Defendant's objection, I looked, I couldn't find a
5 case that supports their theory. I agree that the Defendant
6 fits within one of these definitions. The definition
7 statement also says, It shall be construed broadly and
8 includes the following. And so I don't see that there's any
9 basis. I think the reality is, yes, he did directly influence
10 one of the public officials making decisions on this case.
11 But he also was a public official himself, and public
12 officials are held to a higher standard and there's an
13 increase for that.

14 THE COURT: All right. So that objection is
15 overruled.

16 MS. ORR: In addition we raised an objection that
17 Mr. John Cuellar was not a public official as was countenanced
18 by the guidelines under 2C1.1(b) (3) because he was not a high
19 level decision maker, he was one of 7 of the Weslaco
20 Commissioners and was not, as he testified himself, some
21 important leader of that group, but just merely one of the
22 group that --

23 THE COURT: Well --

24 MS. ORR: -- pushed the contract along, Your Honor.

25 THE COURT: -- no way, I think he's -- that one's

1 overruled, he was definitely a public official, and there was
2 also evidence that for much of this time he was also mayor pro
3 tem. Next?

4 MS. ORR: Yes, Your Honor. The -- not, yes, though
5 I agree with Your Honor respectfully.

6 And then finally we argue that with regard to the
7 obstruction points assessed, the 2 points, here we have a
8 conspiracy that specifically charges this obstructive behavior
9 as part of the actual Count 1 conspiracy in manner and means,
10 Paragraph 26, Subparagraph D. And, you know, every
11 conspiracy --

12 THE COURT: So let me -- I'll interrupt you and
13 then --

14 MS. ORR: Yes, Your Honor.

15 THE COURT: -- tell you where I'm focusing because
16 this one is one that I am on the fence on. And so I looked,
17 you know, at the enhancement, and generally speaking it talks
18 about conduct that goes to obstructing an investigation,
19 prosecution or sentencing. And even though in some regard
20 this obstructed the investigation because -- and in particular
21 because of the attorney/client privilege can impede the
22 investigation.

23 I can't -- I see the point that you raise that this
24 was basically the way the scheme progressed, the way the
25 scheme developed. And although the guidelines do speak to if

1 it was purposely calculated to -- likely to thwart the
2 investigation. And I think there's some argument to be made
3 that it was, again, mostly because it goes -- because of the
4 attorney/client privilege issue.

5 If it had just been a, you know, he's a -- as far as
6 I know there's no public accountant privilege like the
7 attorney/client, but let's just say if he said, Oh, just say
8 that you're the accountant and that's what we're paying for --
9 you know, I might not see it that way. But because it's --
10 if -- I think if the attorney/client privilege is raised,
11 there is much more scrutiny in trying to pierce that to see
12 where the real purpose of these payments are.

13 So I'm sort of back and forth on this one. I think
14 that there's some merit to the argument here, but I guess I
15 will hear from the Government on this one. I will tell you
16 that I'm leading towards sustaining the objection, although I
17 think it's a close call. But it's a close call like in
18 favor -- in favor of leniency to the Defendants.

19 MR. GULLOTTA: Your Honor, thank you. So John
20 Cuellar testified that he and his cousin, Arturo Cuellar, came
21 up with a fake cover story that it was a lie, that he did not
22 do any legal services in exchange for --

23 THE COURT: Well, we know that, so I don't believe
24 for a second that this was for legal services. I'm just
25 saying that this was the way the scheme played out, the

1 bribery scheme played out. So I guess that's why I'm a little
2 hesitant because generally speaking the guideline enhancement
3 is for obstruction of the investigation and it's really -- and
4 it does speak to like once you know there's an investigation
5 going on.

6 MR. GULLOTTA: And so John Cuellar also testified
7 that when he was first interviewed by the FBI he lied to the
8 FBI.

9 THE COURT: Right.

10 MR. GULLOTTA: And he told them that he was going
11 legitimate work in exchange for that money.

12 THE COURT: Right.

13 MR. GULLOTTA: So that impacted the investigation.
14 Eventually he obviously came around to telling the truth.
15 Arturo Cuellar was also interviewed by the FBI, and he talked
16 about who hired John to be the lawyer for the company and
17 paying John as a lawyer for the company. So he also lied to
18 the FBI. So both of these witnesses, who agreed to the fake
19 cover-up story not only agreed to it for the purposes of
20 trying to facilitate the checks so that the people at QRM
21 would go along with writing the checks, but also so that they
22 could fool and impede the FBI. And they tried to do it and it
23 failed ultimately, but that's not the determining factor. So
24 I believe that it's pretty clear obstructionage.

25 THE COURT: Well, I see the point that you make, and

1 I think it is a close call, but because I think it's a close
2 call I think that I err in favor of the Defendant, so that
3 objection is sustained.

4 MS. ORR: Thank you, Your Honor. Just for purposes
5 of the Record, I do recognize, Judge Alvarez, you've made your
6 rulings about the amount. I just want to make sure that I
7 have the benefit of the additional arguments that Mr. Peña
8 made by joining them at this point.

9 And I also would respectfully request the Court to
10 include in the Record only the John Shaw declaration I
11 submitted to the Court so it can be of Record what I attempted
12 to submit I understand you're not taking into consideration.

13 THE COURT: Because there was a deadline and I've
14 heard no good excuse for why the deadline wasn't met --

15 MS. ORR: Well, respectfully, Judge Alvarez, I think
16 there was a good excuse and I offered.

17 THE COURT: I didn't hear it.

18 MS. ORR: But I merely wanted to make a --

19 THE COURT: That you just received yesterday.
20 Receiving something the day before doesn't necessarily explain
21 why that wasn't procured earlier.

22 MS. ORR: I explained I had to read the transcripts
23 that I belatedly got --

24 THE COURT: No, you actually didn't explain, but --

25 MS. ORR: -- respectfully, Your Honor.

1 THE COURT: -- but --

2 MS. ORR: And so I would just ask --

3 THE COURT: Okay.

4 MS. ORR: -- you to make it part of the Record
5 only.

6 THE COURT: Regarding the transcripts, yeah, let it
7 go because we're here now, but --

8 MS. ORR: Yes.

9 THE COURT: -- the transcripts were on the docket
10 as I noted in my order. You responded and indicated that you
11 couldn't access them.

12 MS. ORR: Yes, ma'am.

13 THE COURT: That was not presented to the Court in
14 the motion presented to the Court. In that response you also
15 indicated that Mr. Garcia was able to access, Mr. Garcia was
16 trial counsel and your co-counsel, and I received no
17 explanation for why you couldn't have reached out to
18 Mr. Garcia to access those for you. And Mr. Garcia practices
19 here regularly. If he was trying to access them and couldn't
20 access them, you know, he knows that's --

21 MS. ORR: Yes, Your Honor.

22 THE COURT: -- an easy fix and it's an easy fix.

23 MS. ORR: That's in my status report and --

24 THE COURT: No, no, that wasn't in our status
25 report. No, what you said in your status report was that they

1 weren't going to be produced and even though they were in the
2 Record, then you couldn't access them, but you didn't tell me
3 that your co-counsel who practices here regularly did anything
4 to reach out to the Court to make the Court aware that you
5 couldn't access them.

6 MS. ORR: Well, I don't know if he did or did not,
7 Judge Alvarez --

8 THE COURT: That's what I'm saying --

9 MS. ORR: -- but I did --

10 THE COURT: -- you could have called him.

11 MS. ORR: -- obtain them from him, and I appreciate
12 that, and I filed the email with the Court when I obtained
13 them.

14 So at any rate I'm not trying to go back and argue
15 with Your Honor about the decisions you've already made. I do
16 take exception to them for purposes of the appeal, and I just
17 respectfully request that the Shaw declaration just be made a
18 part of the Record for purposes of the appeal, not -- I'm not
19 quibbling with Your Honor about your decision to consider it
20 or not to consider it.

21 THE COURT: You -- I'm returning it to you, you can
22 raise it with the Court of Appeals, but, no, I'm not taking
23 it.

24 MS. ORR: Thank you very much, Your Honor. I'll
25 file it with the clerk.

1 THE COURT: All right. Okay. So that addresses --
2 actually for Mr. John Cuellar I'll take all of that with
3 Mr. Cuellar complete with Mr. A.C. Cuellar and
4 Mr. Quintanilla.

5 Okay. So for Mr. A.C. Cuellar does the Government
6 then wish to address any of its objections?

7 MR. GULLOTTA: There were 2 additional matters that
8 the Government has raised, the first being essentially very
9 much the same argument that I just made with respect to
10 Mr. Quintanilla, which is that, again, Mr. Arturo Cuellar
11 controlled John, he told him when the payments were coming,
12 how much he was going to get, he decided when the payments
13 were going to stop, he decided to use (indiscernible). He was
14 controlled -- he completely controlled the situation and
15 managed and supervised John to a very clear degree I think you
16 saw from John's testimony. So the Government argues that the
17 manager/supervisor, again a mid-level increase is applicable
18 here.

25 MR. GULLOTTA: Okay. And just for the purposes of

1 the Record, and it's in our briefing and it'll be part of the
2 argument on the -- these offenses probably could not have
3 occurred but for these 2 Defendants, because they had the
4 access to the public official. So I do respectfully continue
5 to believe that they played a more significant role because
6 had they not been able to give Leo Lopez the access to those
7 public officials, this may have never occurred. But I
8 understand the Court's ruling.

9 And the only other remaining issue that the
10 Government raised is the abuse of private trust issue. And so
11 I -- you know, we briefed it in our filing, I looked for cases
12 where there were 2 public -- or 2 trusts at issue.
13 Mr. Cuellar both had a public trust and then the underlying
14 offenses that are addressed in 2C1.1 obviously involve public
15 trust. And as I noted for the Court, there's an application
16 note that just simply says, Do not file 3B1.3.

17 And in looking at the case to exist on this
18 particular application, it does seem pretty clear that the
19 concern is about double counting. And because Mr. Cuellar
20 held a separate private trust with his role at QRM, that is
21 completely unaddressed by 2C1.1, that I think the concern
22 about the whole county is not present here.

23 You know, we heard from Lucy Lozano, she was part-
24 owner of that company. He used the company, he used the
25 company's money and involved the company in a bribery scheme

1 which is a very -- just look at the way the abuse of private
2 trust is described and the examples that the guidelines give,
3 that's exactly it. The only reason it might not apply is
4 because he also abused the public trust.

5 And it's just not contemplated in the book and I
6 didn't find anything in the cases, so I understand the Court
7 may struggle with that. But I do think it's a fair argument
8 to make that because it does seem clear that the concern is
9 double counting, and this would not constitute double
10 counting, this is a completely separate private trust that's
11 applicable.

12 THE COURT: And while I agree that there was abuse
13 of trust, I pulled up the guidelines, they do not apply and
14 it's -- I don't think there's anything ambiguous about that
15 and I think it may be something I can consider overall in
16 sentencing, and if I stay in the guidelines, one of the
17 guidelines, if I go outside the guidelines, what I do, but
18 even though I may think that it is a situation not
19 contemplated by the guidelines, it says, do not apply, so I'm
20 overruling that objection and not applying that.

21 THE COURT: Thank you, Your Honor.

22 THE COURT: Okay. So as far as guidelines for
23 Mr. A.C. Cuellar and Mr. Quintanilla, I think I've addressed
24 everything as far as guideline calculations themselves. Does
25 anybody disagree with that?

1 (No audible response.)

2 THE COURT: All right. All right. So then let me
3 hear fully, and I'll start with Mr. Quintanilla, and,
4 Mr. Quintanilla, in this case I will have you and Mr. Peña
5 step forward. My intention is to hear fully from Mr. Peña
6 and Mr. Quintanilla. Do you wish to say anything to the
7 Government, and then proceed to sentencing for
8 Mr. Quintanilla, then I'll turn to Mr. Cuellar, A.C. Cuellar.

9 MR. PEÑA: I outlined, Your Honor, two of the
10 reasons. One is a downward departure, and this is where the
11 Court now, after having calculated everything, starts
12 considering some other factors. And one of the factors that
13 was presented in our memo is his health. And as the Court
14 is aware just by the trial, we had to actually continue the
15 trial because he had to undergo an emergency bypass. He went
16 through that bypass so now there's a reduced life expectancy
17 whenever something does happen, and Your Honor is aware of
18 that, and it's (indiscernible).

19 And so as a result of that, that's consideration for
20 the Court. And the Court can impose a sentence and not
21 downward depart from what the guidelines recommend at this
22 point, that that would obviously be pretty much a life
23 sentence for Mr. Quintanilla.

24 The second issue that we briefed in the motion, Your
25 Honor, is the family. And we went into some details as far as

1 the family issue. The family issue is he is the main
2 breadwinner of the family, he's the one responsible for caring
3 for the family he has. And so as we briefed in the motion
4 were some sensitive issues that if he is not home, it could
5 have an affect on many other people in this case.

6 And the final one, Your Honor, is the other
7 consideration of abhorrent behavior, which is this is -- he
8 has a long history of working within the community. He has a
9 long history at the same job, he's not a man who jumps from
10 job-to-job, he's been a salesman for many years and gets
11 support from it.

12 He also -- and there was testimony during the trial
13 that he has been an advocate in the City. Any time there's an
14 issue with the streets, any time there's an issue with things
15 like that he is the one at the meetings and he was a fixture
16 at the meetings. He was the one advocating for those things
17 prior to running for office, it wasn't successful, but that's
18 always been his thing is how can I make the community better.
19 And in the end he felt that the water treatment plant was
20 better for the City because the water, as you can see, has a
21 long history of.

22 So for those reasons we'd ask the Court to depart
23 from the guidelines and to render a sentence that would be
24 more commensurate with, one, his actual involvement, his
25 benefit, and what he means to the community, because this is

1 not a charge, it's a violent charge. This is, you know,
2 ultimate, Your Honor.

3 And in that case because of the need, because one is
4 life expectancy and because they need him in the family and
5 because how could he actually benefit which he will dedicate
6 benefitting which he's already demonstrated in many different
7 ways, and he's like to speak to Your Honor at least to that
8 degree.

9 We believe that community service, a long probation
10 if necessary because the Court's have ruled -- I mean
11 probation is not freedom, I mean there's a lot of -- like he's
12 had to live for the last several years. You have to be
13 reporting, he's always been cooperative, has already reported,
14 but he ain't going to -- he's not going to go anywhere for
15 that information, and he's (indiscernible).

16 So for those reasons, Your Honor, we'd ask that.

17 THE COURT: All right. And also so that you're
18 aware, if you want to address it, concerning restitution and
19 fines. And so if you want to address anything in that regard.
20 I received no financial information for Mr. Quintanilla so.

21 MR. PEÑA: And, Your Honor, and so he's been on a
22 fixed salary, so his financials are very simple.

23 THE COURT: But I got nothing.

24 MR. PEÑA: Oh, I understand that, Your Honor. But
25 he gets a paycheck and then from that paycheck he pays his

1 bills. But as far as the restitution, the only way there's
2 any chance of any restitution as far as what he would be
3 responsible for, helping with the Government's (indiscernible)
4 could be if he works, and if he works and dedicates it to that
5 purpose.

6 THE COURT: You know, I sometimes get people mixed
7 up when I'm doing multiple defendants, but didn't I get a
8 letter from a sibling that he also manages family property?

9 DEFENDANT QUINTANILLA: Yes.

10 MR. PEÑA: Yes.

11 THE COURT: Yes. Okay. So I assume he gets
12 something from that as well?

13 MR. PEÑA: Well, Your Honor, these are very small
14 low rent --

15 THE COURT: But see here's the problem when I don't
16 get no financial information and then family reveals these
17 things to me. I have to consider everything presented to me,
18 and he has a family business that apparently he's the manager
19 for and --

20 MR. PEÑA: So the contacts needed to be investigated
21 by the probation officer. Mr. Quintanilla is not a wealthy
22 man. Mr. Quintanilla lives in a very modest home.

23 THE COURT: Mr. Peña, here's my problem, okay.
24 You're just telling me these things. I do like to go based
25 on, you know, what I have and the reports that -- you know,

1 especially for a crime involving these sums of money. If the
2 Defendant chooses not to reveal any financial information,
3 then it leaves me with no sort of beginning ground here to
4 assess those fines, so I go based on what I can consider.

5 MR. PEÑA: Well, and the probation officer on the
6 first, they're the ones that did the extensive investigation.
7 I don't know what information they got --

8 THE COURT: They did it for Mr. Quintanilla. They
9 asked Mr. Quintanilla for it so. Okay. All right. Anything
10 else, Mr. Peña?

11 MR. PEÑA: No, Your Honor.

12 THE COURT: All right. Mr. Quintanilla, is there
13 anything you wish to say?

14 DEFENDANT QUINTANILLA: Your Honor, I just want to
15 say that I'm deeply sorry to my family for what I put them
16 through. I made a promise years ago growing up without a dad
17 that I would never leave them. Fast forward, here I am, doing
18 something, you know, that happened in my life the past 3
19 years. And I've learned what's really important in my life is
20 my family, my kids.

21 Going through some issues with my daughter with her
22 mental problems, I want to give back to the community, Your
23 Honor. I want to create a program where family members who
24 are suffering with the children, right, and there's support
25 out there. There's real no support for family members who are

1 struggling with their children. There's none. And me and my
2 wife had talked about it and talked to my preacher in the
3 church, I talked to another guy who had issues with his
4 daughter too, and so we've got to create something and that's
5 why I feel that has gotten me these 3 years. I'm trying to
6 give back to the community. And if you allow me, that's my
7 goal, that's my ultimate goal, to get there.

8 As far as working, I've been working for the same
9 company 26 years, they've been supporting me all these years.
10 And, yes, Your Honor, I have the financials, I had an issue
11 getting them from the person that had them. But I -- my goal,
12 Your Honor, is to give back to my -- to society, to give back
13 to the community. That's my goal.

14 I've ruined this (indiscernible) all here. I mean
15 after my heart attack everything changed, and I don't want to
16 waste one more minute, Your Honor. And thank you, Your Honor,
17 and God bless you.

18 THE COURT: Thank you, Mr. Quintanilla.

19 Anything from the Government?

20 MR. GULLOTTA: Your Honor, I do have prepared
21 remarks. Is the Court going to sentence Mr. Quintanilla prior
22 to hearing --

23 THE COURT: Initially I said I was going to, but I
24 think I'd like to hear fully from Mr. A.C. Cuellar and then
25 I'll pronounce sentence, because much of what I will say to

1 each is going to be the same, so.

2 MR. GULLOTTA: Because my comments I think can
3 address both Defendants --

4 THE COURT: Both, okay.

5 MR. GULLOTTA: -- so I'll wait till the end.

6 THE COURT: Yes, okay. So we'll wait till the end.
7 Okay. So you can go ahead and be seated now.

8 DEFENDANT QUINTANILLA: And, you know, one more
9 thing.

10 THE COURT: Yes, sir.

11 DEFENDANT QUINTANILLA: -- I was going to say this,
12 as far as getting the restitution paid, that's something I
13 will do. Like I said, I've been working for the same company
14 for and there's a couple of letters from my corporation.

15 THE COURT: Right.

16 DEFENDANT QUINTANILLA: That I would take care of in
17 the next 90 days if you allow me -- I mean I don't want to --
18 I want to continue giving back to society and I will pay my
19 debt.

20 THE COURT: Keep in mind though, I'm considering
21 restitution of several million dollars --

22 DEFENDANT QUINTANILLA: Well, then --

23 THE COURT: -- I mean, you're saying the next may
24 be tough.

25 DEFENDANT QUINTANILLA: -- sorry.

1 THE COURT: All right. Okay. All right. Then you
2 may be seated.

3 All right. Then Mr. A.C. Cuellar and Ms. Orr, we'll
4 hear from you. All right.

5 You may proceed, Ms. Orr.

6 MS. ORR: Thank you, Judge Alvarez. So I would
7 start by just reminding the Court that under 28 USC 994 that
8 the -- when Congress charged the Sentencing Commission with
9 coming up with guidelines, they charged them to consider other
10 sentences other than the guidelines -- or, sorry, recognizing
11 a sentence that was different in kind for first offenders
12 who've never been convicted of a crime. And we just don't
13 have much of that in the guidelines other than the criminal
14 history categories.

15 I also briefed to the Court the recognition by many
16 commentators and some courts that have accepted an alternative
17 to the sentencing guidelines in financial crimes because
18 they're so harsh when the numbers get so high so quickly. And
19 I had recommended to the Court the shadow guidelines and cited
20 the cases where some courts have followed those.

21 Lastly I would commend to the Court what you had
22 filed before you by Mr. Carlos Garcia, the sentencing letters
23 that reflect a life not only of no criminal offenses, but a
24 great deal of altruism, not only caring for people in his own
25 family, but people throughout the community, and a history of

1 that.

2 THE COURT: I did read all of those, and including
3 the one from, I believe it's from a relative of mine that
4 was written --

5 MS. ORR: Oh, fine.

6 THE COURT: -- so, yes, I read all those letters.

7 MS. ORR: Thank you, Judge Alvarez. And then
8 finally as I noted in my pleading that Mr. Cuellar is going to
9 go -- undergo a heart catheterization, he had his registration
10 for it, and that he has that scheduled. He need it for his
11 heart because he's having some problems with that, and that's
12 been set out in the sentencing memo. And I know Mr. Garcia,
13 my colleague, had provided the probation officer the full
14 medical reports he got 6 says ago.

15 So those -- for those reasons, Your Honor, I would
16 respectfully request the Court vary downward in imposing a
17 sentence that's not more than necessary to punish Mr. Cuellar
18 and to, you know, recognize the whole human being and the
19 whole of his life including the offense conduct of course,
20 Your Honor, and his age and his health as well.

21 THE COURT: Mr. Cuellar, is there anything you wish
22 to say?

23 DEFENDANT A. CUELLAR: No, ma'am. No, Your Honor.
24 I don't have anything to say.

25 THE COURT: All right. Thank you. Then you can go

1 ahead and be seated, I'll hear from the Government and then
2 I'll pronounce sentence.

3 MR. GULLOTTA: Thank you, Your Honor. The Court has
4 received complete briefing from the parties so I'm not going
5 to restate everything that's in the Government's memoranda.
6 But I do want to summarize a few key points.

7 This case has the -- has an enormous potential for a
8 deterrent effect. Okay. Remember what happened in Weslaco,
9 that's what people will say after today.

10 THE COURT: And I take it we have no official or
11 person from the City of Weslaco here to address that?

12 MR. GULLOTTA: Not that I'm aware of.

13 THE COURT: Okay.

14 MR. GULLOTTA: So that's what people will say after
15 today, and what that means will be determined by what the
16 Court does today. The next time someone in Weslaco or a town
17 like Weslaco in the Rio Grande Valley is approached with an
18 opportunity because he knows somebody from high school who's
19 on the City commission or something like that, what is that
20 person going to do? Okay. A hardworking person in the
21 community when faced with a very lucrative opportunity is
22 going to be tempted. That's why what happens in this case is
23 so important.

24 If Ricardo Quintanilla and Arturo Cuellar are given
25 light sentences, the message that that sends to the next

1 person in that position is maybe it's worth the risk. There
2 are millions at stake here, maybe it's worth the risk. Okay.
3 The fact that one of the Defendants is asking for probation
4 today even reflects that he is not viewing this as a serious
5 matter.

6 These are not crimes of necessity, these are not
7 desperate defendants involved in a drug crime, or a gang
8 related crime, or an immigration crime. These are Defendants
9 who were living well. They had the support of their
10 community, the constituents, they had financial resources and
11 they had power. And instead of being satisfied with those
12 circumstances, they used them to get more. It's a very
13 serious offense. But the community by and large, not just in
14 the Rio Grande Valley but in the United States, feels that the
15 Government doesn't take white collar crimes seriously.

16 This is a case where we need to dispel that notion.
17 Deterrence is a critical factor, the offense conduct is
18 serious as well. The Defendants were not merely bag men who
19 took money from Leo Lopez and gave it to somebody that Leo
20 Lopez told the to give it to, these were people who had access
21 to public officials. They were necessary to commit the
22 crimes.

23 So their roles were critical, they were not minor
24 players and this is not an argument for the enhancements we've
25 already discussed, but it's an evaluation of the nature and

1 seriousness of the offense, as 3553(a) requires us to do.

2 They each also dictated the terms and instructed the public
3 officials on what to do.

4 The offense conduct is serious and warrants a low-
5 end guideline sentence. The guidelines themselves confirm how
6 serious the Sentencing Commission views bribery offenses to
7 be. As I put in our memo, Amendment 666 states, This
8 amendment increases punishment for bribery, gratuity and
9 honest services cases, just like this one, while providing
10 additional enhancements to address previously unrecognized
11 aggravating factors inherent in some of these offenses. This
12 amendment reflects the Commission's conclusion that in general
13 public corruption offenses previously did not receive
14 punishment commensurate with the gravity of such offenses.

15 The corruption of our system is a serious crime. It
16 impacts the way residents view their Government. These
17 Defendants deprived the City of Weslaco of their right to
18 honest services. And so let's turn to the victims in this
19 case the residents of Weslaco and the City of Weslaco.

20 The Defendants have put forth several letters
21 describing their efforts to help family and friends, including
22 monetarily. But in my experience this is not uncommon in
23 white collar cases. Defendants in white collar cases often
24 take care of the people in their inner circle. It's the
25 people outside of their inner circle who they commit the

1 offenses against and that is the people of the City of
2 Weslaco.

3 And let's not forget this case and the contracts at
4 issue were about the City's water. This wasn't about a sports
5 stadium or a new shopping mall or something that the City of
6 Weslaco's residents might have enjoyed, but not necessarily
7 needed. This was about clean water. Every resident is
8 entitled to clean water, and that is the field upon which
9 these Defendants played their game.

10 And it's not just an abstract concept. It's hard to
11 imagine the entire City as a victim, or all of its residents.
12 But we heard from one. We heard from Elizabeth Walker, and
13 she has dedicated her career to work in the Rio Grande Valley.
14 And despite a serious illness she wanted to participate
15 because this mattered to her.

16 And when she thought she might not be able to, she -
17 - we asked, and the Court allowed and she provided a
18 videotaped deposition just in case she couldn't be here. And
19 frankly she probably could have gotten out of testifying if
20 she wanted to because she had made that video, but she wanted
21 to be here and we saw her use a walker and a mask to testify
22 because this case matters to her. And she's just one example
23 of a resident who cares, so it's not an abstract concept.

24 And going back to my original point, anyone in this
25 area who is presented with this opportunity in the future

1 needs to know that the Court also takes it seriously. So for
2 these reasons and for the reasons stated in our memorandum we
3 ask the Court to issue guideline sentences to both Defendants
4 as well as the monetary penalties outlined in our memorandum.
5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 Okay. Let me have Mr. Quintanilla and Mr. A.C.
8 Cuellar back in front of the Court. And I didn't say for
9 Mr. A.C. Cuellar but the guideline range is 360-to-life for
10 Mr. A. C. Cuellar so.

11 MS. ORR: I thought it was without the 2 obstruction
12 points, Your Honor, and that would bring it --

13 THE COURT: Oh, you're right, I did take those -- I
14 did those down 40, so you're right. So it ends up being the
15 same for each Defendant.

16 All right. So, Mr. Quintanilla and Mr. Cuellar,
17 I've noted I've read everything that has been presented to me
18 on your behalf, I've read everything the Government filed, and
19 I'll start with just some general comments.

20 And the first one goes to the issue as far as the
21 waste water treatment plant, and this morning I heard a story
22 on the news that a community outside of Scottsdale, Arizona,
23 that apparently was getting all it water from Scottsdale,
24 Arizona and Scottsdale because of the fact that they're
25 suffering a drought cut them off so I can't remember how many

1 residents, it was a small community, but they said now their,
2 you know, water is going -- they're going to have to, you
3 know, pay triple probably what they were paying before to
4 obtain the water.

5 And it made me think of this case because frankly
6 the City of Weslaco wasn't completely without water. But in
7 many of the small communities around here, I've lived in the
8 City of McAllen for a very long -- recently and before that it
9 was a long time ago. I didn't experience in McAllen where
10 they gave you the boil water notice, but having at one point
11 in time lived in Donna, I would get those notices more often
12 than I liked. You know, it happens sometimes. But even the
13 boil water notice isn't quite as bad as having a whole waste
14 water treatment plant that needs replacing. So the City was
15 in a situation where they did have to do something, they have
16 to act.

17 Both of you were active members of your community,
18 and I agree with much of what the Government said, both of you
19 were in a position where, yeah, certainly you had done a lot
20 of good to family and friends, and maybe in some instances
21 even people who were not in that category, but one way or the
22 other came to your attention, and that's all certainly very
23 good and it speaks well of you.

24 But when this opportunity came along and when it was
25 a situation where the City really was in desperate need of the

1 facilities that were to be constructed, or reconstructed here,
2 and you saw this opportunity, rather than thinking I need to
3 work to ensure that my community has good drinking water, the
4 community has these services at the best possible price for
5 them, that the citizens of the City do not end up having to
6 pay more than is absolutely necessary for this necessity.

7 And you sort of closed your eyes to all of that and
8 you really looked at how do I line my pocket with some of this
9 money. And didn't do it one time, didn't do it two times, did
10 it over the course of some time here. And while I appreciate
11 the good things that you've done in your community, I, again,
12 agree with much of what the Government said. Remember we're
13 looking at public corruption. I believe it is more than just
14 the particular actions at issue that I have to consider.

15 And the different, you know, different scenario I
16 often hear from defendants, well, different as far as the
17 offense, not different as far as sentencing, and I often hear
18 from defendants who are coming into the country illegally
19 about situations at home and had caused them to flee and they
20 tell me in many of those instances, you know, I can't go to my
21 public officials because they're involved in this, you know --
22 or they're cartels or they're involved in corruption is a good
23 way -- whether those public officials are, you know, City
24 employees, law enforcement, any other type of public official,
25 but in many instances they, you know, like they don't trust

1 them. And totally justifiably don't trust them, okay?

2 We can't have that in our communities. If our
3 public officials can't be trusted, then we really do become a
4 lawless society and public corruption I think does require
5 more from the officials -- no, I'm sorry, public office does
6 require more from those officials than just your average
7 citizen.

8 If you're an average citizen and you walk into the
9 local convenience store and they mistakenly give you change
10 for a 20 when all you gave them was a 5, yeah, you should
11 return it, absolutely, no question about that. But if you walk
12 away with it, you know, you're impacting the store but you're
13 not necessarily impacting somebody else who walks into the
14 store and has the same thing happen to them, because it's
15 independent, there's no issue as far as the store itself
16 having engaged in any wrongdoing here.

17 But when we have a public official who is willing to
18 accept bribes, to line their own pockets, especially for a
19 necessity like this. And I do think that part of what the
20 Court has to consider are what the public perception is in
21 those cases.

22 And recognize when Ms. Orr touched on as far as
23 what, you know, some courts refer to as the shadow guidelines
24 and I recognize that some courts believe that when we're
25 dealing with white collar crimes because generally you have

1 people that are otherwise law-abiding, who otherwise come from
2 a decent family, who otherwise have done good in the
3 community, that they sere a lesser sentence somehow.

4 And it troubles me because, and not that either one
5 of you came from privilege by any means, but certainly you
6 have done well in your, you know, adult life. And sometimes
7 we have individuals who have come not just from environments
8 where they struggle financially, but environments where they
9 didn't have decent parents, they didn't have a good
10 neighborhood, they didn't have the advantages of being able to
11 reach out to family for support where they basically from a
12 very young age would like to struggle on their own, and so in
13 those instances I think, Yeah, maybe it's not so unusual that
14 they have engaged in some kind of criminal conduct to address
15 you know, their needs.

16 I had a young man this morning who said, you know, I
17 engaged in criminal conduct because my mother was in desperate
18 need of surgery and there's no way we could gather the money.
19 He doctor said, You could sell 3 houses and it wouldn't be
20 enough money, and they were in Mexico. And so he said, So I
21 thought this was a way to make money. He said unfortunately
22 here I am and my mother didn't get her surgery and she died.

23 You know, so somehow you can understand why they go
24 down that path, but I quite frankly have been at a loss to
25 understand why you went down this path. Nothing I've seen or

1 heard explains to me or gives me an inkling of why you would
2 go down this path, other than the money that used to profit.

3 I am particularly troubled, Mr. Cuellar, in the
4 instance where you come up with a scheme to bribe Mr. John
5 Cuellar through their business. It is, you know, it's beyond
6 comprehension that a man with your business experience would
7 do that, because I do agree with the Government that that was
8 a abuse of trust though with that company. I've not applied
9 the enhancement because I think the guidelines say do not do
10 it, it doesn't say do not do it unless. So I'm following the
11 guidelines in that regard. But I think if the guidelines
12 didn't have that language, you know, I'd be looking at that as
13 another enhancement as well.

14 But for both of you I believe that this was a
15 situation where you were thinking of yourself without giving
16 any real thought to your families during this period of time,
17 that perhaps because everybody accepted the unknown -- a
18 citizen of Weslaco and the unknowing commissioners when
19 everybody else was willing participants, and in your mind you
20 thought nothing of it. And because the City actually needed
21 these services that you thought nothing of it.

22 The Court considers all that is required to
23 consider, the Court considers all the 3553(a) factors. And
24 like I've said, I've read the numerous letters written on your
25 behalf. And, Mr. Quintanilla, I was particularly impressed

1 with the mother of your child and the letter that she wrote.
2 She talked about your relationship with your son, and
3 certainly it speaks well of you. I will say that sometimes
4 maybe we set the standard so low that when somebody is meeting
5 to exceeding those standards, you know, we're just unduly
6 impressed. You know, you're doing what a father should do.
7 That is what a father should do. So it's a good thing
8 obviously, but what I'm saying is that it's what any father
9 should do.

10 Mr. Quintanilla, as I said, I read those numerous
11 letters, and I will go it again, but, you know, even a
12 relative wrote on your behalf. And certainly I recognize that
13 you've done a lot of good in your community. In your case I
14 was particularly impressed by the story of you taking more or
15 less this young man with disabilities under your wing and
16 provide for him, and certainly that speaks very well of you.

17 But we do have to consider more than just that be
18 cause what we're looking at here is criminal conduct. If you
19 were being considered for citizen of the year, you each might
20 have been good contenders here, but we do have this crime that
21 went on over the course of some time, that over the course of
22 that time involved millions of dollars. It is impossible, I'm
23 sorry that the City isn't here, it is impossible to say what
24 the cost to the City will be. There is no way to go back in
25 time and redo this.

1 One of the considerations in the guidelines when it
2 speaks out about determining loss is what cost the City might
3 have to incur to cure these issues, and quite frankly I don't
4 think that can be determined. They may ultimately recover
5 some from these entities, but I don't know that they'll ever
6 really be in the same position as if they had moved forward
7 without this. And the citizens of the City of Weslaco, they
8 will continue to deal with these issues I think for quite some
9 time. But without having received from them anything more
10 that they did receive it, the Court, you know, goes far with
11 what it has here.

12 The Court will say one last thing in that regard
13 considering for each one of you your particular circumstances
14 here, you know, and considering for each one of you the
15 guideline range that we're in. I do believe that a slight
16 departure -- actually it will be a variance, a slight variance
17 is warranted here. I have, in a few cases over the course of
18 my life as a judge, sentenced people to life, but with one
19 exception that has generally been in cases where there was a
20 death resulting through the offense, so I hesitate to have to
21 send somebody to prison for what is essentially going to be
22 life.

23 And I know that it's impossible to predict
24 regardless of what age, how much time they have, and even
25 doctors with their medical science can't always tell you that.

1 But I do believe that that is a consideration in this case,
2 and recognizing that I believe that although I am convinced
3 that I have made the proper determination as to the guideline
4 calculation, I do believe that it results in a guideline range
5 that is higher than is necessary to fulfill all the 3553(a)
6 factors. So the Court as I said is going to render the
7 various entities' request based in large part of what has been
8 presented to the Court through each counsel for each
9 Defendant.

10 For Mr. Cuellar I do take into account the fact that
11 you profited more in this case and maybe with the exception of
12 Mr. Lopez, who is not -- you know, never going to be before
13 the Court, you -- these Defendants did profit the most here.
14 The Court is going to sentence you to a term of 240 months in
15 custody.

16 For Mr. Quintanilla, although you fall into the very
17 same category here, the Court does take into account that what
18 you profited here was a lot less. But again, believes the
19 Court has properly calculated and the Court believes that
20 profit was not necessarily by your own design, that it was
21 just the way things played out here. But I will give you an
22 additional variance here lower than what Mr. Cuellar has
23 received. In light of that the Court is going to sentence
24 you, Mr. Quintanilla, to a term of 200 months in custody.

25 The Court in imposing that sentence for each one of

1 you has considered all the 3553(a) factors and the Court
2 believes that that sentence is sufficient but not greater than
3 necessary to meet all those factors. In doing that the Court
4 considers the guideline range but also does consider the need
5 to promote respect for the law, to deter further criminal
6 conduct and to address the public corruption issues that are
7 always prevalent in these cases. That is not a specific
8 factor in the statute, but it is something that the Court
9 considers nonetheless.

10 Addressing the issue as far as term of supervised
11 release for each one of you the Court is going to place you on
12 a 2-year term of supervised release. I believe that is all
13 that is necessary considering the background that each one of
14 you brings here. During that time you are to comply with all
15 the standard conditions adopted by the Court.

16 For restitution the Court is going to order in the
17 amount of \$4.1 million for each one of you, but that is joint
18 and severable. The Court is also going to impose here for
19 Mr. A.C. Cuellar a fine per count, and I did receive and I
20 appreciate having received the financial information because
21 it totally helped come up with a -- what I consider to be an
22 appropriate fine here. The Court is going to order a fine for
23 Mr. A.C. Cuellar of \$15,000 per count, that means 61 counts
24 for a total of \$915,000.

25 For Mr. Quintanilla, without having received any

1 information regarding the finances but understanding that he
2 was employed, obviously will not be employed for some time
3 after he has been in custody, but understanding that he does
4 have -- or at least at this time have that family-owned
5 business, the Court now is going to order a reduced fine for
6 Mr. Cuellar (sic), the Court is going to order a fine of \$1000
7 per each count, and that is 15 counts.

8 For each one of you you also have to pay the \$100
9 special assessment per count. For Mr. Quintanilla that is a
10 total of \$1,500, for Mr. Cuellar that is a total of \$6,100.
11 And the Court does order forfeiture as was previously ordered
12 and makes that a final order of forfeiture.

13 I think I've covered everything, but, Probation, did
14 I miss something, or my staff, did I miss something on the
15 judgment? I've got fines, I've got restitution, I've got time
16 of supervision. I think I got everything.

17 MS. MARTINEZ: Yes, Your Honor, it appears so. With
18 regard to BOP recommendations, special conditions, I think
19 that's all.

20 THE COURT: Yeah, and I don't think I had any -- saw
21 any need for special conditions, so -- unless you see
22 otherwise.

23 All right. So for both of you you do have the right
24 to appeal. If you wish to appeal, you need to advise your
25 attorney. That appeal needs to be filed within 14 days. If

1 you cannot afford an appeal, you can -- you may file for *in
2 forma pauperis* in which case a clerk will file your notice of
3 appeal and the Court will appoint appellate counsel.

4 There is the issue that each has been out on bond.
5 Where does the Government stand on that now?

6 MR. GULLOTTA: Thank you, Your Honor. In light of
7 the significant sentences issued today the Government moves
8 for immediate remand.

9 THE COURT: The Court agrees with that. So for each
10 one of you the Court does order that you surrender to the
11 marshals to begin serving your sentence.

12 MS. ORR: Your Honor, if I could remind the Court
13 that Mr. Cuellar has a heart catheterization that he needs to
14 undergo, and I respectfully request the Court to reconsider
15 him surrendering until after that heart catheterization and
16 further respectfully request that Court recommend that he be
17 confined in the Fort Worth Medical Facility.

18 THE COURT: I will make the recommendations, but I'm
19 not inclined to postpone surrender.

20 Anything else?

21 MR. GULLOTTA: No, Your Honor.

22 THE COURT: All right. Thank you. Then you are --
23 counsel is excused.

24 All right. Then I will proceed with Mr. John
25 Cuellar.

1 (Pause in the proceedings.)

2 THE COURT: All right. Mr. Montalvo then.

3 MR. MONTALVO: Your Honor, we -- I'm sorry, I think
4 that this is a little out of the ordinary, but the Court --

5 THE COURT: That's all right. Take your time.

6 MR. MONTALVO: -- Your Honor, so we'll take up the
7 issue with the Court if the Court would please, the issue once
8 more I follow the Court has already ruled, I'd like to just
9 make a Record of the fact that we are objecting to the issue
10 of the more than one bribe. Again, I understand the Court's
11 already made their ruling. However, I'd like to make the
12 point that the installment payments were as a result of a
13 single action, the trial itself was as a result of bribes paid
14 to a public official. Those bribes were to ultimately be the
15 objective of obtaining contracts --

16 THE COURT: Can you pause for just a second.

17 Everybody needs to step out and that door needs to
18 be closed, please.

19 My apologies, it's very distracting to the Court.

20 MR. MONTALVO: Yes, Your Honor.

21 (Pause in the proceedings.)

22 THE COURT: Mr. Montalvo, you may continue.

23 MR. MONTALVO: Yes, Your Honor. Thank you. Your
24 Honor, the only -- again, just for the Record we are asking
25 the Court to consider that this was as a result of the

1 objective of the scheme, the bribes that were paid would be
2 considered one sole bribe, or rather a related payment in the
3 essence that it was a single objective of obtaining those
4 contracts. That's why we'd ask the Court to consider the
5 2-point enhancement for that would be removed on behalf of the
6 sentencing guidelines, or on the part of the sentencing
7 guidelines for this matter, Your Honor.

8 THE COURT: And that I certainly understand that
9 won't --

10 MR. MONTALVO: Yes, Your Honor.

11 THE COURT: -- repeat what I said earlier, but my
12 earlier ruling applies --

13 MR. MONTALVO: Understood, Your Honor.

14 THE COURT: -- to this one as well.

15 MR. MONTALVO: I understand. I just wanted to make
16 it for the Record, Your Honor.

17 THE COURT: That's okay.

18 MR. MONTALVO: The other issue we have, Your Honor,
19 is the role adjustment. Your Honor, I understand that
20 everybody had a role to play here, but it's been clear from
21 the get-go that there were clearly levels of involvement and
22 levels of participation in this entire scheme. Mr. Cuellar
23 had been -- previously been -- served as a City commissioner
24 for 12 years for the City of Weslaco, and never even
25 considered any form or any type of ploy or plot or any scheme

1 to call in question his actions, until he was approached by
2 what he would consider nothing more than a figurehead, a role
3 model and the patriarch of his family.

4 Once his father died, that's what -- A.C. Cuellar
5 took the role over. And as a result I believe --
6 Mr. Cuellar's an intelligent man, Your Honor, I'm not going to
7 question it. He's a grown man, he makes his choices, his own
8 decisions, he's a licensed attorney. But again, the influence
9 that Mr. Cuellar had over John was not just as a public
10 official but as a family member, somebody who John would never
11 consider having been steered wrong by him, or trying to
12 recruit him to do something illegal.

13 But again, Your Honor, I'm not excusing his actions.
14 Mr. Cuellar's a grown man and made his own choices. However,
15 I think there is a hierarchy to this scheme and I believe
16 Mr. Cuellar was, for lack of any other terms in the sentencing
17 guidelines, a minor participant in this. Yes, he had the
18 position as a City commissioner, however, in the past his role
19 was not more than someone as a public servant, someone who
20 served the City without, again, an inclination of doing
21 anything wrong until he was recruited and told to do what he
22 was asked to do. Clearly he took payments for that.

23 But again, I'd like to remind the Court that at some
24 point in time Mr. Cuellar wanted to withdraw from this. He
25 wanted to leave the City of Weslaco. It wasn't until Leo

1 Lopez and Mr. A.C. Cuellar came to him and sat him down and
2 said, Why do you want to leave, stay here, pay him. And
3 that's how this scheme continued for all intents and purposes.
4 Your Honor.

5 THE COURT: And I understand the arguments you make
6 and I think I tend to agree that there was perhaps somebody
7 with influence here that, you know, sort of put Mr. Cuellar in
8 this position. But I think that's something I can consider,
9 you know, when I decide ultimately where I am placing
10 Mr. Cuellar, but I don't really think that goes to role. The
11 bottom line is that Mr. John Cuellar is the public official
12 being bribed here and I don't think that makes him a minor or
13 minimal participant. I think he is the average participant,
14 so that objection is overruled.

15 MR. MONTALVO: Understood, Your Honor. Understood.
16 The other objections, Your Honor, we had filed, the Court has
17 already ruled on which was the valuation of the bribes, or the
18 payments. We had the minor role and we also had -- with
19 regards to objections, Your Honor, the Court had ruled on
20 everybody's already, so I don't want to repeat myself or ask
21 the Court to restate the same --

22 THE COURT: Anything else --

23 MR. MONTALVO: -- positions that would be made.

24 THE COURT: All right. Anything else you wish to
25 say?

1 MR. MONTALVO: Well, Your Honor, with respect to
2 Mr. Cuellar himself, it's been 4 years, it's been a long time
3 since this started and I've gotten to know Mr. Cuellar.
4 Again, he's been a lawyer for 31 years, he's an intelligent
5 man, has a very big heart with the result of always trying to
6 help people. Believe it or not that really is who he is.

17 Your Honor, Mr. Cuellar has sincere -- has sincere
18 remorse for his actions that brought him here today. He did
19 struggle and feuded with himself for quite a while before
20 proceeding to testify as a witness. The Government can attest
21 to the fact that he struggled with the fact that he would have
22 to testify against for all intents and purposes the patriarch
23 of his family. Not because he wasn't willing to accept
24 responsibility, but -- for what he had done, but because it's
25 simply not in his nature to believe that he may bring upon any

1 sort of discord upon his own family.

2 Your Honor, we know the Court has a multitude of
3 discretion in passing sentence. I would respectfully ask the
4 Court for a sentence that is appropriate, not solely on the
5 basis of the offense, but based on the individual before the
6 Court. I'm sorry, Your Honor, I know that a lot of times, and
7 I'm not saying the Court does, but a lot of times the general
8 public wants somebody sentenced because we're mad at them,
9 because we're disappointed because they let us down.

10 I would ask the Court to consider a sentence not
11 because we're mad at John, I would ask the Court to consider a
12 sentence essentially to determine if we're afraid of John. Is
13 John Cuellar somebody we wouldn't want back in our community.
14 Is this somebody that we would absolutely want -- not want as
15 our next door neighbor. I would ask the Court to distinguish
16 between disappointment, being mad at somebody, as the general
17 public would be, and somebody that we're in fear of, and
18 somebody that we wish wouldn't be in our community.

19 I think there's a distinguishable factor there and I
20 would ask the Court to sentence him along the lines of, you
21 know, is John really, really a bad person, or are we just mad
22 at him, are we just disappointed. All that being said, Your
23 Honor, we're asking the Court to consider all these factors
24 and respectfully sentence Mr. Cuellar to the lowest possible
25 sentence.

THE COURT: Thank you.

Mr. Cuellar, is there anything you wish to say?

DEFENDANT J. CUELLAR: Yes, Your Honor. This is very difficult for me to stand here going -- having so many emotions go through my mind at this time. I am feeling a lot of humiliation, embarrassment, a lot of shame for things that I brought upon my self. The citizens of Weslaco gave me their confidence and had confidence in me to represent them, and I was privileged to represent them for many years.

And I failed them, I made some really big mistakes in this case, and I haven't forgiven myself and I've thought about this case daily since I was voted out of office in 2014. And I wish I could go back and do it all differently again, because I do feel bad that I hurt the citizens of Weslaco and the City of Weslaco. And I take this opportunity to apologize to the citizens that suffered consequences of my votes.

There were a lot of people that were hurt that I didn't think would be hurt, family members, my brothers, my sisters. I feel like I brought a lot of shame to my father's name. My dad worked a lot of his adult life to serve the community of Weslaco. And I apologize to my family as well for the weakness I guess I felt during the time frame I was voting this way. But I feel great remorse for my actions, and I've tried to start making amends and trying to re-establish my credibility, and hopefully one day give back to the

1 community and make this right.

2 And I -- my remorse encouraged me to take
3 responsibility for this case. And as Mr. Montalvo said, I
4 pled guilty on August 2 of 2019, I have been cooperating with
5 the Government, and we came to a position where they gave me a
6 plea bargain, and I accepted that and I came and stood before
7 you. And I continued to work with the Government in helping
8 them put this piece together for this offense. And it was the
9 right thing to do, and I'm glad that I did that.

10 I apologize again to the citizens of Weslaco. I
11 hope I get a chance to make it up to them. And hopefully that
12 working with the Government and helping them was a start. And
13 so now I place this in your hands and hope that I am given an
14 opportunity to make complete -- make it up completely so that
15 I can finally forgive myself for what I did.

16 THE COURT: Thank you.

17 Anything from the Government?

18 MR. GULLOTTA: Yes, Your Honor. As the Court knows,
19 we filed a motion under seal relating to this matter. I do
20 want to just add a little bit to it. I can say sort of
21 anecdotally that I got into this case probably later than any
22 of the attorneys at trial. The first civilian witness I met
23 with was Mr. John Cuellar. He met with us as frequently as we
24 needed, he met for as long as we needed. And sometimes I
25 think he probably wanted to leave for even longer, but we had

1 a lot to do.

2 But I say that because John Cuellar pleaded guilty
3 early in this case. He pleaded guilty before Mr. Lopez passed
4 away, so he didn't know that he would become an even more
5 important witness to the Government. But he did become an
6 important witness to the Government. And I sat with him
7 longer than this Court will have the opportunity to have John
8 and I can say that I felt a genuine desire to do the right
9 thing as he just described.

10 I didn't -- I've sat with a lot of cooperators in a
11 lot of different kinds of cases over the years, and some of
12 them you can just tell are trying to get the most out of
13 bargaining as they can. And with -- understandably so. I did
14 feel a genuine desire to make up for his mistakes, and he did,
15 he delivered. And he withstood aggressive cross-examination,
16 he testified truthfully and completely and he held up his end
17 of the bargain, and I think it's important that the Court know
18 that from the Government's perspective as we've sat with him
19 for hours in working through that.

20 The Government is in ways limited in terms of what
21 it can recommend. And absent those limitations may recommend
22 an even greater departure. The Court is obviously not limited
23 by our recommendation, but I want -- I think what's probably
24 coming across is a full support for the departure from the
25 guidelines for John Cuellar because I do believe him and I've

1 had the opportunity to assess his character in a way that
2 makes me comfortable recommending that to the Court. So I ask
3 that Your Honor take all of that into consideration, as well
4 as the things that we put in our memorandum, and depart from
5 the guidelines.

6 THE COURT: Thank you.

7 Mr. Cuellar, the Court does consider all that has
8 been presented, and, you know, all that I said to Mr. A.C.
9 Cuellar and Mr. Quintanilla about the offense itself applies
10 in this case as well. But you sat here, you listened so I'm
11 going to repeat all of that. What I will say, Mr. Cuellar,
12 and maybe you more than -- Mr. A.C. Cuellar didn't say
13 anything, Mr. Quintanilla did say a few words.

14 But I think one of the things that you said that
15 maybe helps me to understand how you ended up here is
16 basically you saying, you know, this weakness and I think
17 recognizing that really does go a long way on your part to
18 understand how you got into this situation, because I think I
19 sometimes have many defendants who, despite a guilty verdict
20 and despite the evidence quite frankly in some cases being
21 overwhelming they were still adamant that they did nothing
22 wrong, and they don't stop to evaluate their situation to see
23 how they got there. So I do appreciate that, Mr. Cuellar.

24 I received letters of support on your behalf as
25 well, and certainly I was impressed with the one from your

1 partner, not so much how he talks about you now but basically
2 how you initially helped him and his family out when you were
3 a practicing attorney and the difference that that made for
4 him and his family even before, you know, he became your
5 partner, how that really changed the course of his life, and
6 more importantly the course of his niece. So certainly,
7 Mr. Cuellar, there's a lot of good things to be said here.

8 I do appreciate what the Government as noted, and I,
9 like the Government, even though my assessment here is limited
10 on what is presented to me in the trial and then everything
11 else I review, I tend to agree with the Government that you
12 really did make the case. I think had you not pled early, had
13 you not testified with Mr. Tafolla, and the jury, you know,
14 apparently found him credible. I think he wasn't quite as
15 strong as a witness as you were.

16 And I think in particular, Mr. Cuellar, your
17 willingness to admit that these payments were not payments for
18 your services as an attorney but what they were, bribes, went
19 a long way. I think if you had stood by that story the case
20 for the Government would have been a very tough case to prove.
21 I do -- I believe that that warrants some consideration. The
22 Government's motion goes there, but I agree that maybe
23 something more than what the Government recommends is
24 warranted.

25 And I'll touch finally on what I referenced earlier,

1 and that is that it's sad to me that it's not a unique
2 situation when we have family members involved in criminal
3 enterprises, criminal activity. It happens more often than
4 one may think. I do believe that here there was some
5 influence because it was Mr. A.C. Cuellar asking you to
6 participate here, and in particular I think that became very
7 clear to me.

8 One, Mr. Montalvo has referenced when you were
9 thinking of not, you know, making another -- or not continuing
10 with your public services, but in particular when you lost the
11 election and you reached out to Mr. A.C. Cuellar and he
12 basically turned his back on you, I think it became very clear
13 to the Court that despite the family relationship that he was
14 looking to use you and when you were of no more service to
15 him, that was the end of his I guess not necessarily
16 relationship with you but basically his, you know,
17 accessibility.

18 And that said, I do also recognize that, you know,
19 testifying against him was a difficult choice that you made.
20 I think you made the right choice, but I also know that those
21 kinds of situations can often divide a family and sometimes
22 can never heal, and I know from everything presented here that
23 you consider it to be -- family, very important. So the Court
24 also appreciates that.

25 The Court does believe that it's something more than

1 what the Government has recommended is warranted in this case.
2 I do have to consider, as I said with both Mr. A.C. Cuellar
3 and Mr. Quintanilla, the nature of the offense here. And this
4 is bribery of a public official. I believe that considering
5 the offense that it is necessary to impose a term of
6 imprisonment but I don't believe that anything close to what
7 the guidelines recommend, and even the departure that the
8 Government recommends I believe is more than is necessary.

9 The Court is going to sentence you, Mr. Cuellar, to
10 a term of 36 months in custody. Much of the reason the Court
11 goes with that is what is in the Government's motion and what
12 the Government touched on here, what I've touched on as well,
13 but the Court in that regard, like I did with the other 2
14 Defendants, does consider your personal medical history and
15 that was also presented to the Court here. So I believe that
16 that sentence concerning all of the 3553(a) factors is
17 sufficient but not greater than necessary.

18 And I believe in light of the fact that you have
19 been under Court supervision for these past several years, I
20 do not see any need for further supervision after, so I am not
21 imposing any term of supervised release. Once you complete
22 your sentence that will complete your sentence altogether in
23 this case.

24 You do have to pay your \$100 special assessment, the
25 Court does in this case order the forfeiture of \$405,000, you

1 know, as that reflects the bribery payment, and then the Court
2 does order restitution joint and severable as it did with the
3 other Defendants of \$4.1 million.

4 You do have the right to appeal. If you wish to
5 appeal, you need to advise your attorney. That appeal needs
6 to be filed within 14 days. If you cannot afford an appeal,
7 you may file for *in forma pauperis* in which case the clerk
8 will file your notice of appeal and the Court will appoint
9 appellate counsel.

10 And the Court for Mr. John Cuellar is willing to
11 allow him to self-surrender. Does the Government have any
12 objection?

13 MR. GULLOTTA: No objection, Your Honor.

14 THE COURT: All right. So, Mr. Cuellar, you will be
15 notified of when and where to surrender. You must do so as
16 you are notified because a failure to do so could result in
17 separate charges being filed. You'll need to get with the
18 Marshals before you leave so they can get information from
19 you.

20 MR. GULLOTTA: I'm sorry, Your Honor, I may have
21 just missed it and not write it down, but is there no fine in
22 the matter?

23 THE COURT: The Court is not imposing a fine in this
24 matter.

25 Anything else?

1 MS. MARTINEZ: Yes, Your Honor. For purposes of the
2 judgment would the Base Offense Level be a 35 and a 1?

3 THE COURT: Yes, ultimately -- I'm sorry I never did
4 say, but, yes, so we -- the Court went with what is in the --
5 and I don't think I ever asked the Government, but I take it
6 the Government is moving for the third point on the
7 acceptance?

8 MR. GULLOTTA: Oh, I'm sorry, I forgot --

9 MR. MONTALVO: Yes, Your Honor.

10 THE COURT: We never did that.

11 MR. GULLOTTA: My apologies.

12 THE COURT: Okay. So, yes, it will be 35 and a 1.

13 MS. MARTINEZ: Thank you.

14 THE COURT: All right. Anything else then?

15 MR. GULLOTTA: No, Your Honor.

16 THE COURT: All right. Thank you. Then you may be
17 excused.

18 MR. MONTALVO: We may be excused? Thank you.

19 THE COURT: Thank you.

20 DEFENDANT J. CUELLAR: Thank you, Your Honor. I
21 appreciate you taking the time here.

22 (Hearing adjourned 4:09 p.m.)

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1 *I certify that the foregoing is a correct transcript*
2 *to the best of my ability produced from the electronic sound*
3 *recording of the proceedings in the above-entitled matter.*

4 /S./ MARY D. HENRY

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